

# **Awakening Participation:** Building Capacity for Public Participation in Environmental Decisionmaking

**SZENTENDRE**

DECEMBER 1996



**THE REGIONAL ENVIRONMENTAL CENTER**  
*for Central and Eastern Europe*

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## Preface

The REC Public Participation Training Project reinforces the REC's ongoing commitment to increasing public participation in environmental decisionmaking. The Training Project is an outgrowth of the expertise gained through several years of REC policy research and cooperation with environmental leaders throughout the region on public participation issues, and following the development of a series of REC public participation workshops and materials, including a *Manual on Public Participation in Environmental Decisionmaking*, and a report on the *Status of Public Participation Practices in Environmental Decisionmaking in CEE*.

The REC's ongoing activities and research in public participation in environmental decisionmaking has documented and illustrated well the need for capacity and institution building to promote public participation at all levels of the environmental decisionmaking process, on the part of individuals and institutions of all sectors of society, private and public alike -- from government officials and authorities, to NGOs and community organizations, to business and industry, to the general public and individual citizenry. REC's 1995 regionwide *Status Report of Public Participation Practices in Environmental Decisionmaking in CEE* identified a variety of barriers to public participation in the region, including:

- a *lack of willingness and openness* of authorities to make environmental information available or decisionmaking processes transparent and accessible to public involvement and scrutiny;
- a *lack of awareness or understanding* among the general public or citizens of their basic rights;
- a *lack of experience or knowledge* among the authorities or citizenry of methods and techniques to facilitate or ensure public involvement, respectively; and,

- a *lack of collaboration and cooperation* both between and within sectors on environmental decisionmaking.

These issues are all obstacles to effective involvement of the public in environmental decisionmaking processes, and require increased local capacity either through awareness-raising or skills-building initiatives to overcome. The Public Participation Training Project is one attempt by the REC to address these local needs.

The Public Participation Training Module for Bulgaria is the product of extensive effort by a team of individuals consisting of both REC staff and local partners. The contents are the product of a cooperative effort that began in 1995 among Magda Toth Nagy, Alexander Kodjabashev, Jiri Dusik and Marietta Diankova. Special thanks goes to this group which identified the core contents of the module and has been involved throughout the project. Alexander Kodjabashev was responsible for the difficult tasks of researching and writing the legal components of the materials. Chapter 8 is based on materials prepared by Krassen Stanchev of the Institute for Market Economics and offset with materials provided by Macrin Desa of Ecosens, Bucharest.

Thanks also goes to the Union of Bulgarian Foundations and Associations (UBFA) for organizing the first test of the materials and to the Environmental Management and Training Center (EMTC) in Sofia for organizing the final translation of the module and the training of trainers. Oreola Ivanova, Rossen Roussev and Sylvia Magyar at REC also played a key role in the translation, layout and production of the printed materials.

I would like to thank all of these individuals for their contributions and support.

Lee Davis  
Project Coordinator

# **Introduction:**

## Public Participation Training



## Introduction Public Participation Training

### PROJECT GOALS

The REC Public Participation Training Project has three primary goals:

- to *increase the public's awareness* of the benefits and value of public participation in environmental decisionmaking;
- to *strengthen the capacity and skills* of the public in formal and nonformal methods/techniques of public participation in environmental decisionmaking processes;
- to *encourage multi-sector cooperation* and partnership in environmental decisionmaking among citizens, NGOs, local and national governments and business/industry.

### TRAINING OBJECTIVES

The REC Public Participation Training Module is designed to provide workshop participants or readers with the following knowledge and basic skills:

- an understanding of who the key *environmental stakeholders* are in their country, the diversity of priorities and opinions among different sectors of society, and the relevance and benefits of multi-sectoral collaboration, cooperation and partnership for effective environmental decisionmaking;
- an understanding of the general guiding *principles and relevance of public participation* in environmental decisionmaking and the relative benefits and costs of participatory approaches;
- an understanding of the *current status of public participation* in environmental decisionmaking in their country, specifically, and in the CEE region, more generally;
- an understanding of the *legal and nonformal framework* for public participation in local, national and international decisionmaking processes, and methods and opportunities for utilizing these instruments.

## TRAINING MODULE DESIGN

The Module incorporates both an awareness raising and skills-building approach to public participation training. The module includes both general information, guiding principles and techniques of public participation, as well as very specific legal and nonformal methods for exercising basic public participation rights and privileges. The materials are also designed in “modular” form to allow flexibility in use for a variety of audiences, experience levels and duration.

### Module 1: Multi-Sectoral Cooperation

*Module 1 introduces participants to the importance and benefits of a multi-sectoral approach to public participation, including the benefits, costs and motivations of cooperation among sectors of society.*

### Module 2: Principles of Public Participation

*Module 2 introduces participants to the basic concepts, terminology and principles of public participation, including an understanding of what constitutes “participatory decisionmaking” both at an organizational and national level, who constitutes “the public,” roles and responsibilities of authorities and individual citizens in public participation, differentiation between “active” and “passive” participation, levels of participation, and the costs and benefits of public participation.*

### Module 3: Developing a Public Participation Strategy

*Module 3 guides participants through a strategic thinking process designed to help them develop a participation action strategy for their own particular case or problem, including problem identification, establishing goals/objectives, assessing multi-sectoral stakeholders, allies and opponents, identifying methods and techniques applicable to their case and examining their problem from the variety of perspectives presented in Modules 4 through 9.*

#### 4: Public Participation in National Level Governmental Decisionmaking

*Module 4 introduces participants to the options and possibilities for public participation in the environmental decisionmaking processes at the national level, including an understanding of the fundamental powers of individuals and institutions at the national level, and both direct and indirect opportunities to gain information about or access to national decisionmaking processes in their country.*

#### 5: Public Participation in Local Level Governmental Decisionmaking

*Module 5 introduces participants to options and possibilities for public participation in decisionmaking processes at the local or municipal level, including an understanding of the fundamental powers of individuals and institutions at the local level, and both direct and indirect opportunities to gain information about or access to local decisionmaking processes in their country.*

#### 6: Public Participation in Business Decisionmaking

*Module 6 introduces participants to the options and possibilities for the public to influence the activities of business and industry institutions which have an impact on the environment, including a variety of options in their country for the public to gain information about business activities, and the rights and obligations of businesses to provide information on their activities.*

#### 7: Public Participation in the Environmental Impact Assessment Process

*Module 7 introduces participants to the options and possibilities for public participation in the EIA process in their country, including an understanding of the EIA procedure, and opportunities for involvement at each stage of the process.*

#### 8: Public Participation and International Financing Institutions

*Module 8 introduces participants to the options and possibilities for public participation in the decisionmaking processes of international financing institutions, including the procedures for public access to information as well as the importance and relevance of such public involvement.*

#### 9: Challenging Decisions of Public and Private Institutions

*Module 9 introduces a variety techniques for appealing decisions through judicial processes.*

# Goals and Objectives



## Worksheet Individual Expectations

DIRECTIONS: *Write your answers to the following questions below. Cut the paper into pieces along the dotted lines. Write your name on each piece. Pin them on the wall with those of the other participants.*

Your Name

**1.** What is the primary reason you came to this workshop? What is your primary interest in the topic of public participation?

Your Name

**2.** What are your personal expectations for the workshop? What do you hope to learn from the workshop?

Your Name

**3.** How will you know whether your goals for the training have been achieved?

Your Name

**4.** What is the most important experience or skill you think you can contribute to the workshop and other participants?

Your Name

**5.** How do you expect to use what you learn in this workshop to improve your work in public participation?

Your Name

**6.** What questions or concerns do you have regarding the workshop?



## Exercise Group Expectations

### **Do Participate**

in discussions and exercises.

### **Do Listen**

to what other participants have to say.

### **Do Respect**

the opinions and perspectives of other participants.

### **Do Evaluate**

Constructive criticism is welcome and requested.

### **Don't be Passive/Don't Dominate**

You have much to share and much to learn from others.

### **Don't Interrupt**

when others are speaking.

### **Don't Judge or Assume**

the opinions and perspectives of other participants.

### **Don't Criticize**

without providing suggestions and alternatives.

# **Module 1:**

## **Multi-Sectoral Cooperation**



## **Module 1: Multi-Sectoral Cooperation**

### **Purpose**

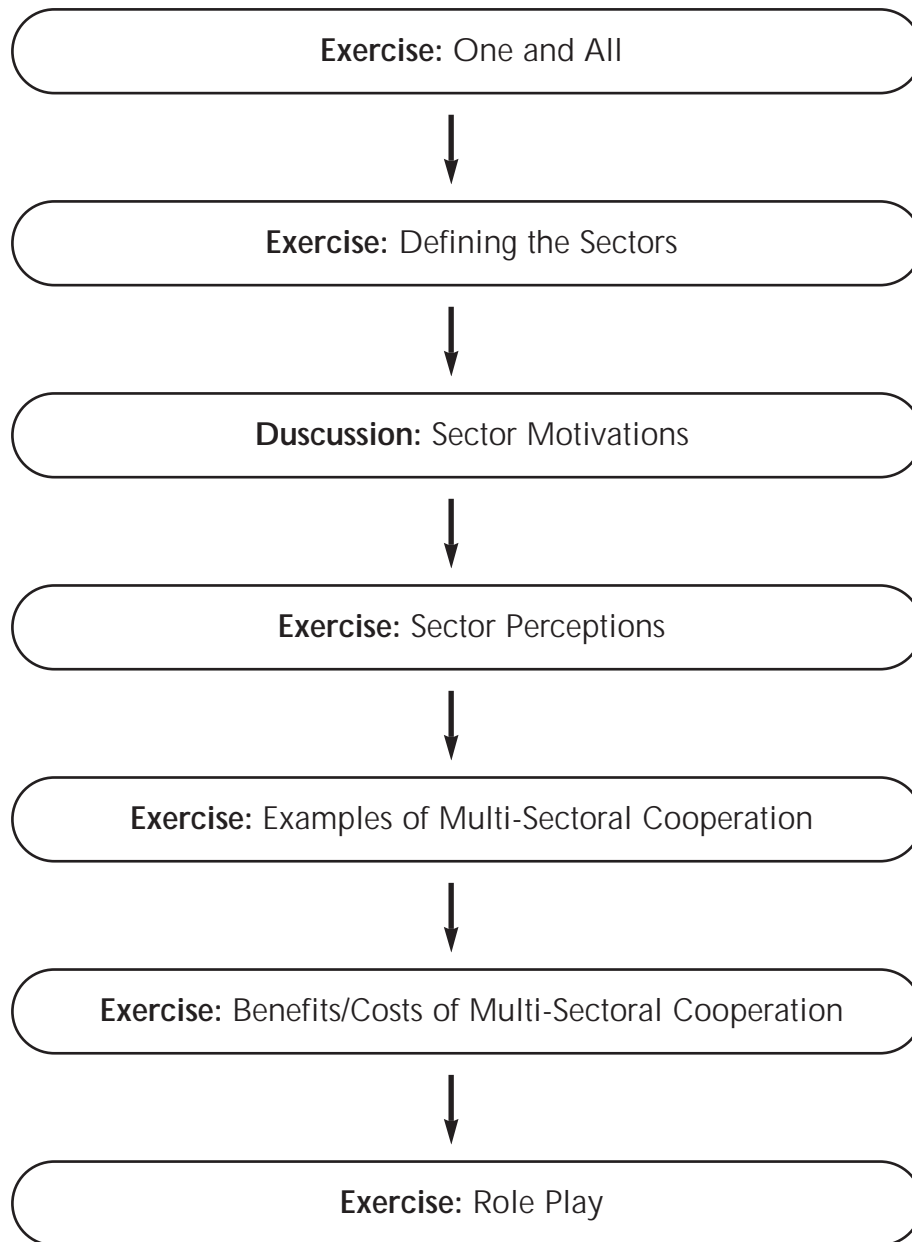
The purpose of Module 1 is to engage participants in exercises designed to illustrate the benefits and principles of multi-sectoral cooperation -- between government, business, NGOs and individual citizens -- in order to facilitate effective public participation in environmental decisionmaking processes.

### **Objectives**

This training module is intended to provide participants with:

- an understanding of the benefits and obstacles of multi-sectoral approaches to environmental problemsolving;
- an awareness of the similarities and differences between the missions and priorities of different sectors of society in relation to environmental issues;
- an awareness of the respective motivations of governmental officials, businesses and NGOs regarding public participation in environmental decisionmaking.

## Contents: Multi-Sectoral Cooperation



## Exercise One and All

### **DIRECTIONS:**

#### **EXERCISE 1: One**

*In the space below, draw your vision of an ideal environment. You have two minutes to complete this task. How similar is your drawing to that of others'?*

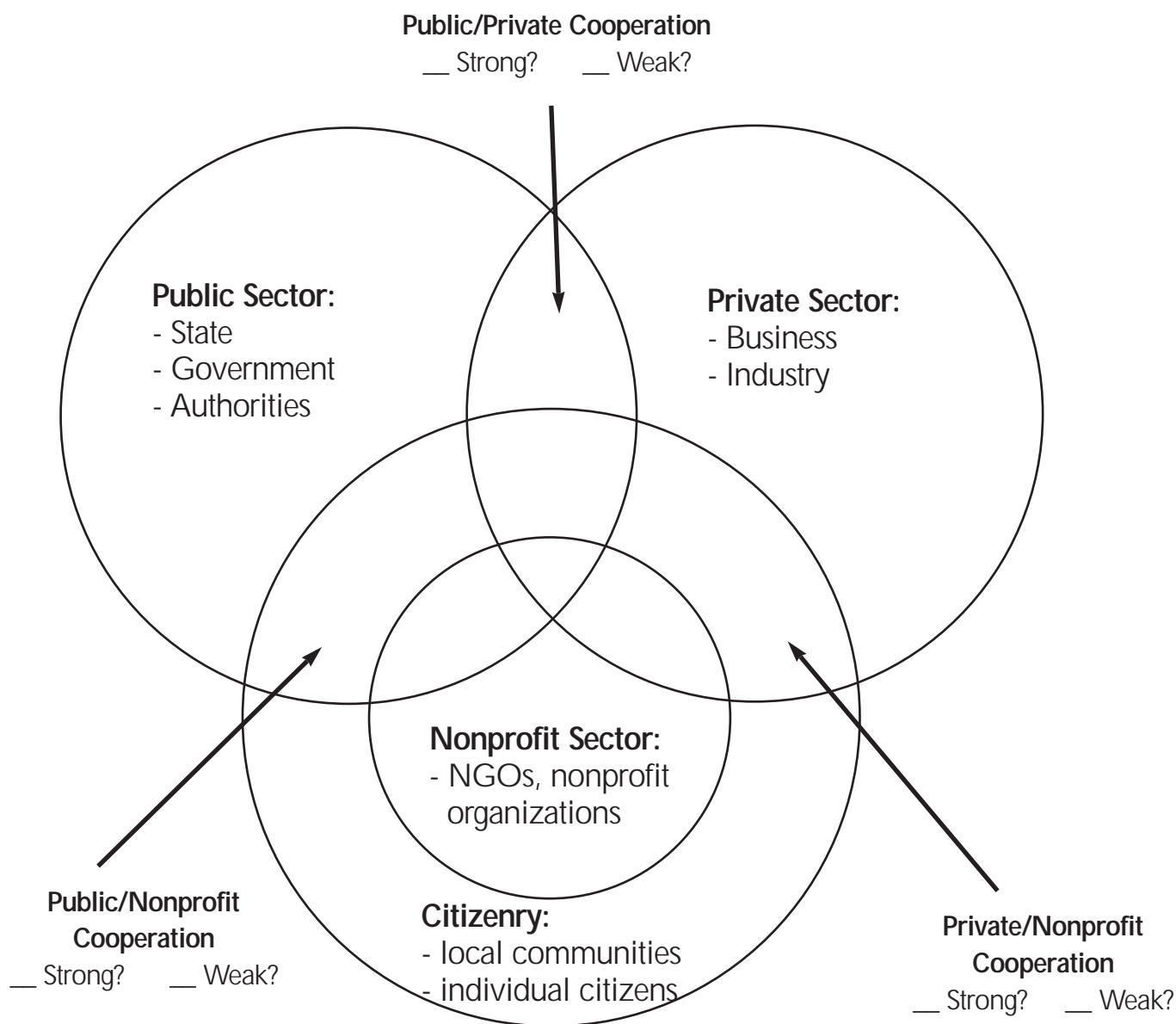
#### **EXERCISE 2: All**

*Place a larger piece of paper on the floor. All together as a group draw one picture of the group's vision of an ideal environment. You must all hold the same pen at the same time and agree on what to draw together. Everyone must agree. You also have only two minutes to complete this task. What was the difference in this process with the first? How much of your first drawing is reflected in the groups'?*

## Worksheet Defining the Sectors

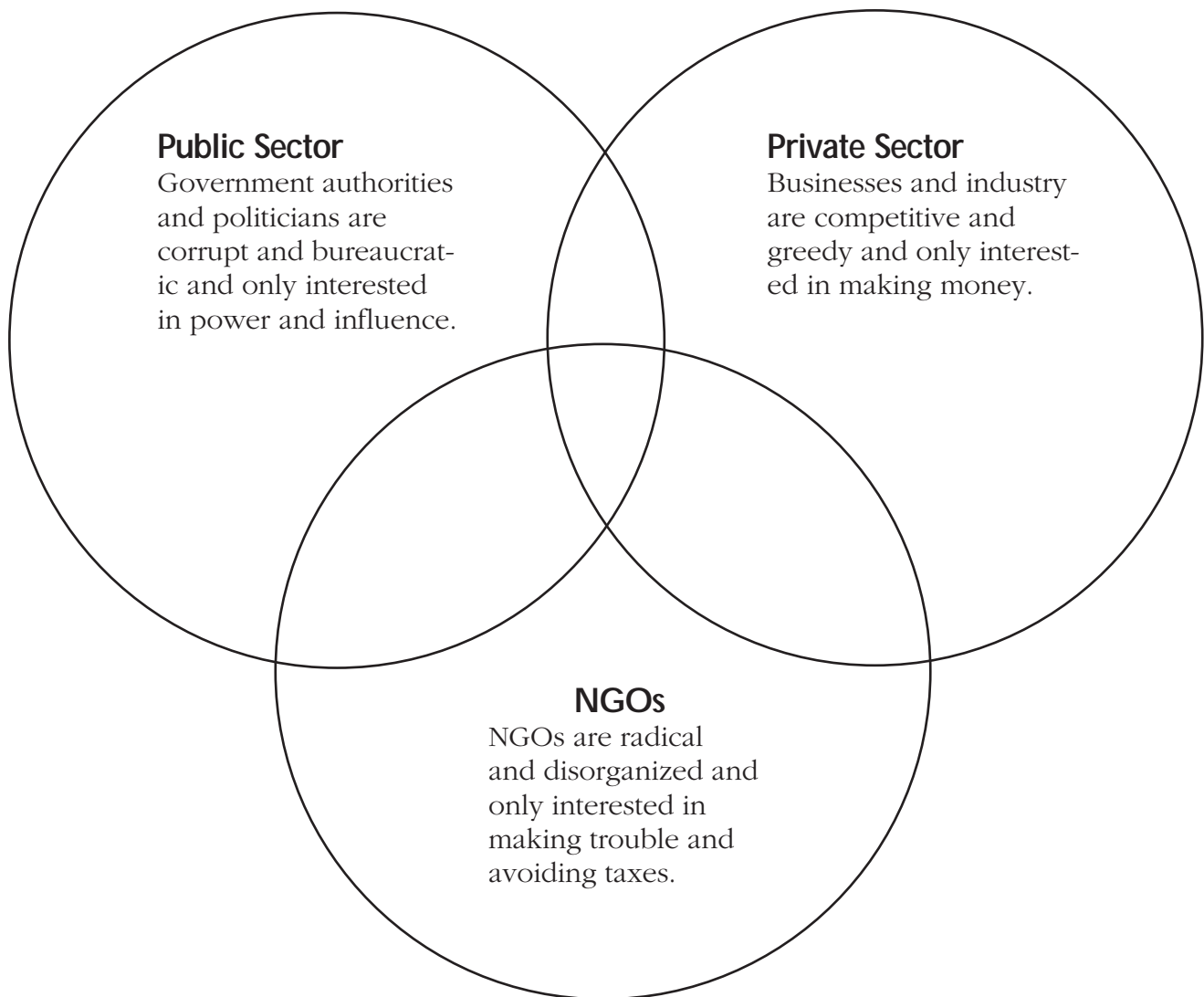
**DIRECTIONS:** *Who are the primary individuals and institutions from each sector of society that are either directly involved in or somehow influence your work?*

*How often do you work with individuals or institutions from other sectors? Between which sectors is there generally **strong** or **weak** cooperation in your community/country? Why?*



## Discussion Sector Motivations

*What do you think motivates the individuals or institutions in different sectors of society? Do you agree with the statements below?*



## Worksheet Perceptions Matrix

**DIRECTIONS:** *How do the sectors perceive one another in your country/community? In each box below, write your opinion of how each sector perceives the role, mission and effectiveness of itself and of other sectors in society?*

	GOVERNMENT	BUSINESS	NGOs	
GOVERNMENT	Government perception of itself	Government perception of Business	Government perception of NGOs	How others perceive you ↓
BUSINESS	Business perception of Government	Business perception of itself	Business perception of NGOs	
NGOs	NGOs' perception of Government	NGOs' perception of Business	NGOs' perception of themselves	
	How you perceive others →			

- How similar are your perceptions of yourself to others' perceptions of you?
- How similar or accurate are the sectors' perceptions of one another?



## Worksheet Examples of Multi-Sectoral Cooperation

**DIRECTIONS:** *What examples do you know of cooperation between each sector in environmental issues in your community or country? Describe a case of each below.*

### Cooperation Between Authorities and Business

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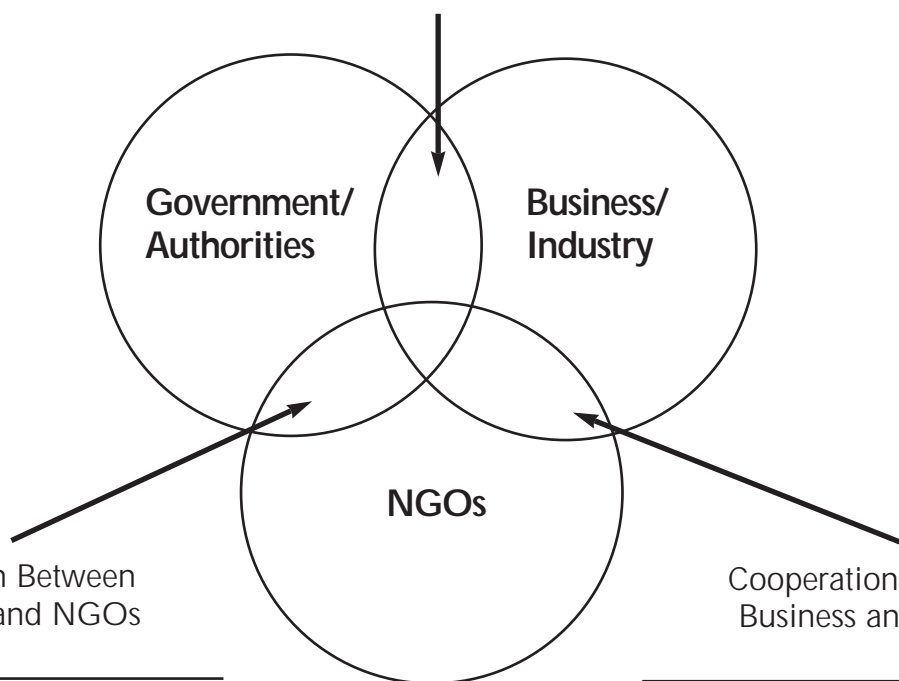
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Cooperation Between  
Authorities and NGOs

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Cooperation Between  
Business and NGOs

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## Worksheet Benefits/Costs of Multi-Sectoral Cooperation

**DIRECTIONS:** What are the primary **benefits** of cooperation between different sectors? What are the primary costs of cooperation between different sectors? Are there specific cases or issues where cooperation is especially worthwhile? or not worthwhile?

Benefits of Government/Business Cooperation?

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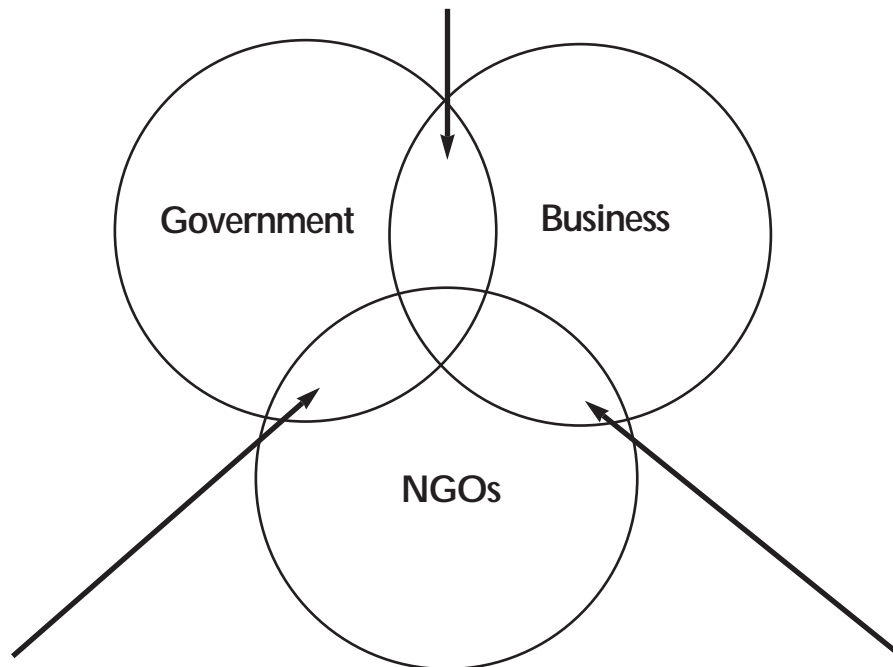
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Costs of Government/Business Cooperation?

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Benefits of Government/NGO Cooperation?

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Costs of Government/NGO Cooperation?

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Benefits of Business/NGO Cooperation?

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Costs of Business/NGO Cooperation?

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## Role Play Exercise Introduction

### **DIRECTIONS:**

1. *Read the background information about the case.*
2. *There are 7 individual roles available. Distribute the roles among the group. Those who do not have specific roles should share the role to act as “Local Citizens.”*

### **Roles:**

- *Mr./Ms. Major, Mayor of Purety*
- *Mr./Ms. Rich, The Investor*
- *Mr./Ms. Smarts, The Local REI Expert*
- *Mr./Ms. Hope, EIA Team Leader*
- *Mr./Ms. Moneybags, a Local Businessperson*
- *Mr./Ms. Times, a journalist*
- *Mr./Ms. Green, a local NGO representative*
  
- *Local Citizens*

3. *Get the written description of your individual role from the workshop trainer/facilitator.*

*Acting within your role, develop a solution to the problem as a group. Don't forget that there is a serious toxic waste problem that must be managed and solved in some way. You may develop a cost-benefit analysis of several proposed solutions, but you must come to a group consensus on only one solution. You must answer all of the questions on page 14.*

4. *Choose a group rapporteur to report on the group's work after you have come to a solution.*

## Role Play Exercise Background Information

**DIRECTIONS:** *Read the following background information about the role play exercise.*

Plans are underway to build a depository for industrial toxic wastes in the town of Purety. The depository is to be located on the edge of the town in a valley near the Big White River.

A large private company is the primary **investor** of the project. The company needs the depository to store the toxic wastes of its cleaning and recycling station.

Several **other business persons** in Purety also have recycling stations and are interested in the project. The wastes of these stations is currently stored at the town waste depository which is nearly full to capacity. In addition, the waste from these plants has been classified as “toxic and dangerous industrial waste.” The waste contains heavy metals, organic solvents, bio-organic materials and solids, and other types of carcinogens.

The **local community** has objected to any further dumping of these wastes in the town depository. Following the **community's** objection to further dumping of toxic wastes in the town depository, the **investor** asked the community to determine a location for a new toxic waste depository. The **investor** preferred the location in the valley near the river since it would reduce the transport costs necessary to dump waste.

The chief of the environmental division in the local community organized a meeting with representatives and experts of the local regulatory and Regional Environmental Inspectorate (REI). The participants in the meeting produced a “protocol” in which they indicated the valley location as the place for the new waste depository. One of them however, the **expert from the REI**, signed the protocol with a “special dissenting opinion.”

The protocol prescribed that a preliminary environmental impact assessment (EIA) report was required in the valley area in which the depository construction was planned. The **investor** hired a team of engineers to conduct the EIA study. The **EIA team leader** asked a hydro-geologist and a toxicologist to join the team.

The report produced by the engineers contained nothing that disturbed the public. However, the report findings of the hydro-geologist indicated that the proposed site in the valley is a carstic zone containing water-rich layers deep in the ground. The toxicologist pointed out that this zone is a “wet zone.”

A toxic contamination of the soil and of the ground was certain if the depository would be constructed. Next to the wet zone was the ground water layers, the drinking water source for the town of Purety. The toxicologist concluded that the project provided a high environmental risk.

The **EIA team leader** seemed a bit disappointed with the results. He and the **investor** both had different expectations. He did include these materials in the report, however, he put down a final general conclusion: “There is a certain ecological risk, which could be avoided through technical methods, such as . . .” and listed several methods. He failed to mention the huge cost of these methods which would multiply several times the cost of the project expenditure.

The **investor** asked the local **REI expert** to issue a final decision on EIA act on the basis of this preliminary report. The REI sent the report to the next higher authority, the Ministry of Environment (MoE) which approved the report and gave a final decision on the EIA. The MoE decided that a final EIA report should be made on the project.

## Role Play Exercise Role Descriptions

**DIRECTIONS:** *Read the short description of your role. For each there is “public information” which you should share with the group at the beginning, and a “secret” which you may not share with anyone unless you decide you want to.*

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### **Mr./Ms. Major, Mayor of Purity**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* You have the authority to influence the project process. You are up for reelection in less than a year.

*Secrets:* You are close friends with the investor, he’s given you money to help you get reelected. You are pressuring the Inspectorate to give a positive review. You don’t want the public involved, but if they all approach you together you will have to support their wishes.

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### **Mr./Ms. Rich, The Investor**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* You are a wealthy private investor with a reputation for polluting the environment. You have a lot of influential political friends.

*Secrets:* You are friends with the Mayor and made contributions to his reelection campaign. You have offered the Inspectorate more money and business if this project receives a positive review. You don’t want the public involved but you must approach the NGO and offer a public hearing if you can organize it.

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### **Mr./Ms. Smarts, The Local REI Expert**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* You are well-respected in the community as a scientist and environmentalist. You signed a decenting opinion of the project protocol.

*Secrets:* The Mayor is pressuring you to give a positive review of the project despite your professional opinion that it will be very harmful and hazardous. You would like to find some way to involve the public, but are afraid you will be fired if you do.

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**Mr./Ms. Hope, EIA Team Leader**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* You are a well-respected engineer and recently started consulting services in providing EIA services to public and private clients.

*Secrets:* The investor has promised you a larger payment and many future contracts for your work if this project proceeds. If the public gets involved and asks questions, you fear it will complicate the situation since you know the ecological threat and cost of technology is very large.

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**Mr./Ms. Moneybags, a Local Businessperson**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* You are a well-respected business person in the community. You are interested in the project since it will create local jobs and you also need additional waste depository space.

*Secrets:* You could save a lot of money if it proceeds, but you are worried about the negative health effects. The Investor has asked you to pressure the Mayor, perhaps through “donations” to his/her reelection campaign, but you have resisted out of fear of being found out by the local press.

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**Mr./Ms. Times, a journalist**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* You are a reporter from the largest local-area newspaper, and plan to write a story about the proposed project.

*Secrets:* You think that someone has been bribed, but no one is talking. You must personally interview everyone privately during this exercise and try to find out and expose their secrets.

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**Mr./Ms. Green, a local NGO representative**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* Your NGO is considered one of the most active groups in the community and are an excellent community organizer.

*Secrets:* The investor made a recent donation to your NGO. If you accept it, you could pay your office rent for 6 months and have enough money to work full time on your environmental projects.

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**Local Citizens**

Remember! Public information you may share. Secrets you should not share.

*Public Information:* You are opposed to further dumping of toxic wastes in the town depository. You are not certain if the location proposed by the investor is a good one, you need more information.

*Secrets:* You don't know whom to trust or not. You are sceptical of both the investor and the government's intentions, but are uncertain how to continue. You are looking toward Mr. Green's NGO for leadership.

# **Module 2:**

## Principles of Public Participation



## Module 2: Principles of Public Participation

### **PURPOSE**

The purpose of Module 2 is to engage participants in deliberation over the basic concepts and terminology “public participation” and to come to a collective understanding of its meaning and applicability to daily work.

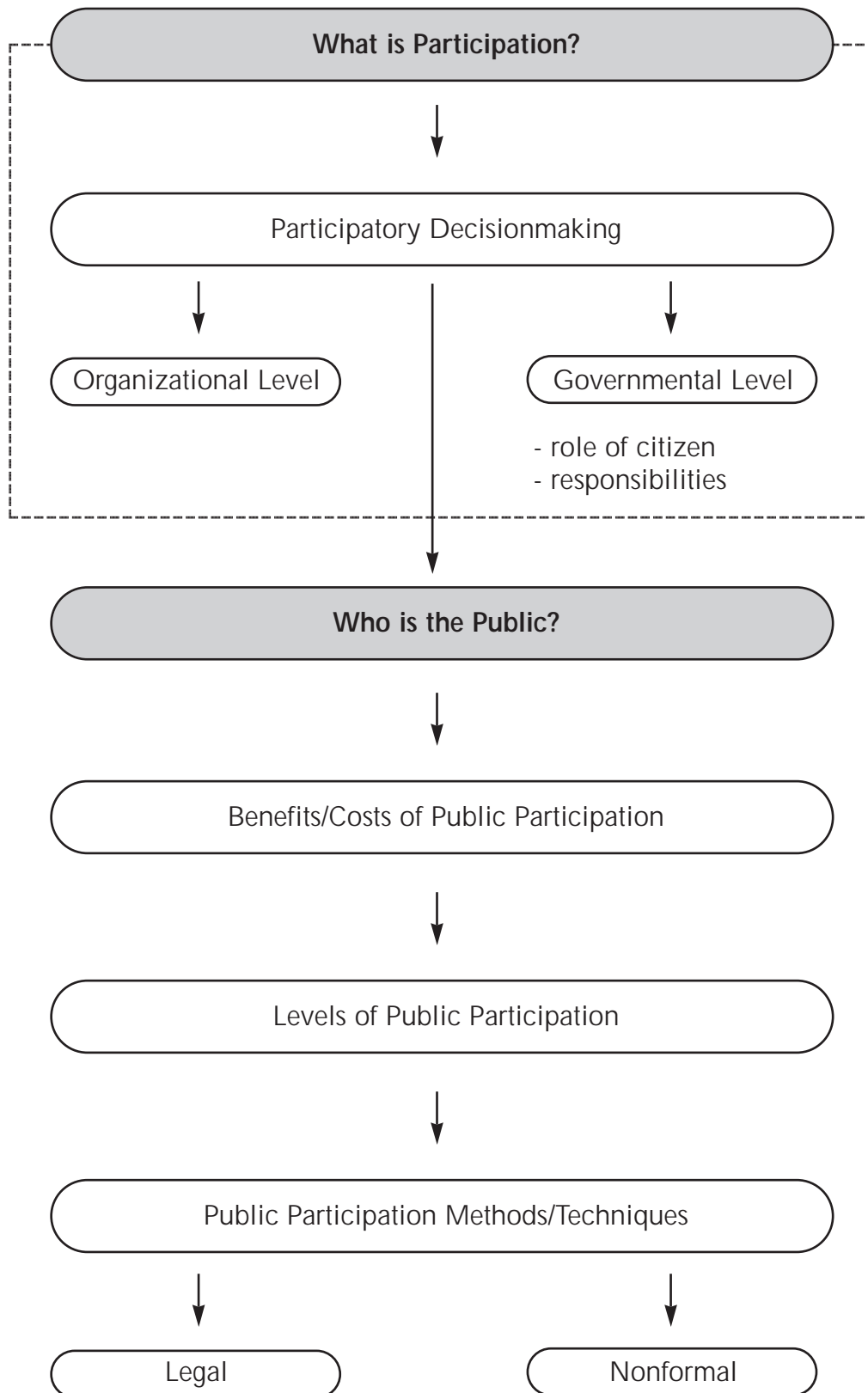
### **OBJECTIVES**

At the end of this module, participants should have an understanding of:

- the difference between “participatory” and “non-participatory” processes;
- the difference between “active” and “passive” participation;
- what is meant by “decisionmaking”;
- the process of decisionmaking in their own organization;
- the level of participation in the decisionmaking process of their own organization;
- who constitutes “the public”;
- costs and benefits of public participation for different stakeholders;
- different levels of public participation;
- basic methods and techniques of public participation.



## Contents: Principles of Public Participation



**Worksheet** What is Participation?

List some adjectives you would use to describe a “participatory” process.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

List some adjectives you would use to describe a process that is “not participatory.”

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

## Worksheet Organizational Decisionmaking Process

Participant Name \_\_\_\_\_

*Draw a representation of the decisionmaking process that exists in your organization. Use whatever method you prefer (symbols, flowchart, diagram, etc.) The drawing should indicate **who is involved** and **at what stage** in the process they are involved.*

**Worksheet** What is the “Decisionmaking Process”?

*With the group, decide what are the stages of the decisionmaking process:*

*Check next to those stages where you are involved in your organization:*

\_\_\_ *I am involved.*



\_\_\_ *I am involved.*



\_\_\_ *I am involved.*



\_\_\_ *I am involved.*



\_\_\_ *I am involved.*



\_\_\_ *I am involved.*

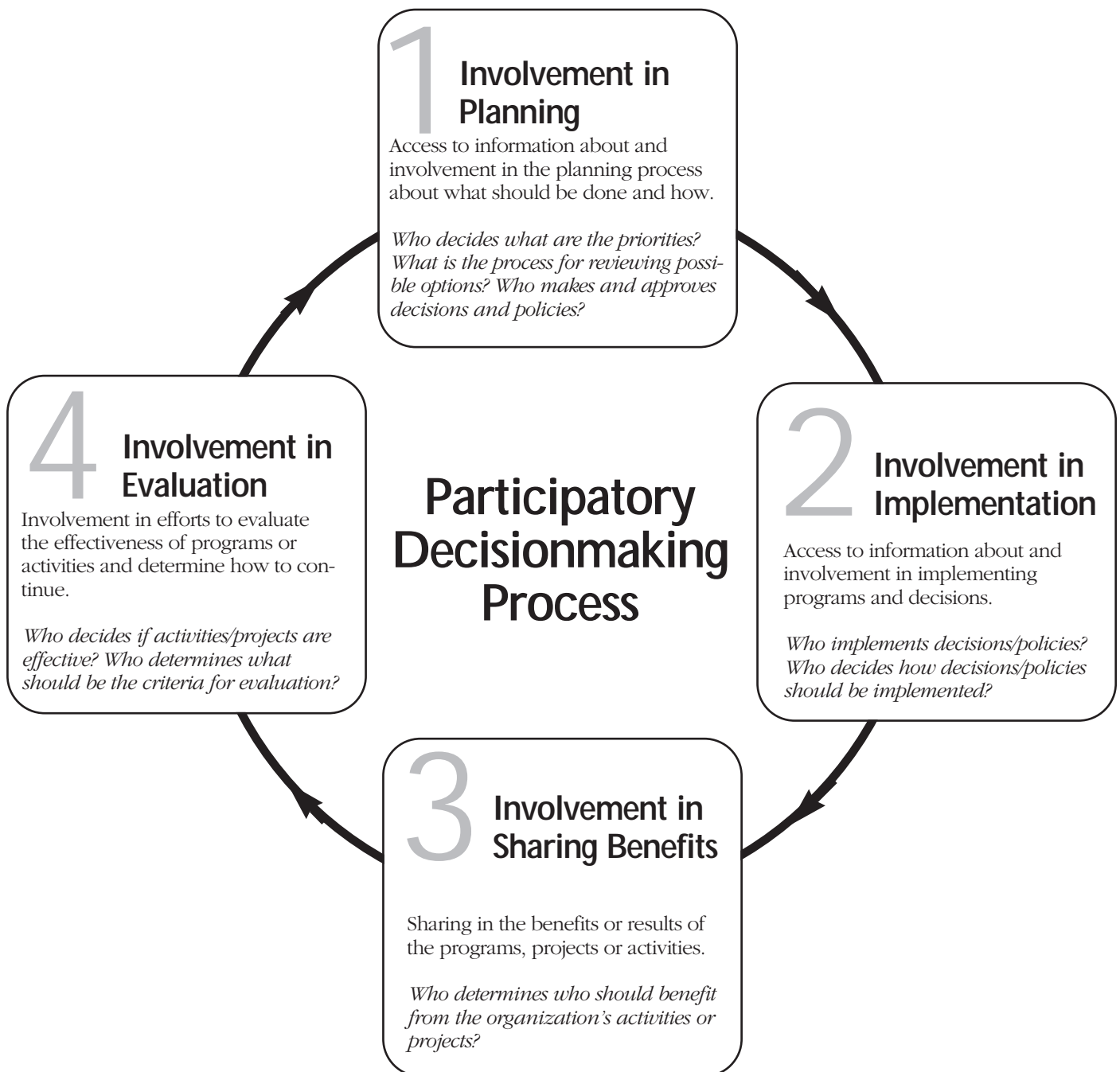


\_\_\_ *I am involved.*



\_\_\_ *I am involved.*

**Diagram** Participatory Decisionmaking



## Exercise Participation Assessment Tool\*

DIRECTIONS: This is an experimental exercise designed to indicate an individual's perception of the level of participation by members, staff or other actors in decisionmaking processes in an organization or project. *Answer the questions applying them to either your organization or project. Circle the letter on the answer sheet which you think best describes the situation in your organization. Not every question may be applicable to your organization or project.*

### 1. Who initiated forming the organization/project?

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

### 2. When the organization/project was started, who formulated the by-laws and regulations?

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

### 3. Who designs projects in the organization?

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

### 4. Who decides whether to continue or terminate a project?

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

### 5. Who decides on the term of office and/or removal of officers of the organization?

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**6. If there is a some kind of training or event, who decides who from the organization will attend?**

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**7. Who represents the organization publicly most of the time?**

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**8. Who decides on membership dues, fees and/or prices for the organization?**

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**9. Who has the authority to change the rules and policies of the organization?**

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**10. Who is usually asked to deal with the most difficult problems facing the organization?**

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**11. Who usually decides what the organization should do during a crisis or an emergency?**

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

- 12. Who sets criteria for accepting new members or hiring new staff for the organization?**
- a. authorities outside the organization
  - b. outside experts/consultants with some leaders
  - c. the leaders/officers
  - d. the leaders and some members/staff
  - e. the members/staff
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 13. Who determines the amounts of financial resources budgeted for different organizational activities/projects?**
- a. authorities outside the organization
  - b. outside experts/consultants with some leaders
  - c. the leaders/officers
  - d. the leaders and some members/staff
  - e. the members/staff
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 14. Who has authority to approve expenditures of the organization?**
- a. authorities outside the organization
  - b. outside experts/consultants with some leaders
  - c. the leaders/officers
  - d. the leaders and some members/staff
  - e. the members/staff
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 15. During meetings, whose suggestions are considered most important?**
- a. authorities outside the organization
  - b. outside experts/consultants with some leaders
  - c. the leaders/officers
  - d. the leaders and some members/staff
  - e. the members/staff
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 16. If there are rules and policies not useful to the organization, how are they changed/eliminated?**
- a. by decree of outside authorities
  - b. by decision of outside expert/consultant and some leaders
  - c. by majority vote of leaders/officers
  - d. by majority vote of members/staff
  - e. by consensus of all members
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 17. For general organizational policy questions, how does the organization make decisions?**
- a. by decree of outside authorities
  - b. by decision of outside expert/consultant and some leaders
  - c. by majority vote of leaders/officers
  - d. by majority vote of members/staff
  - e. by consensus of all members
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_



**18. How are officers of the organization elected to their positions?**

- a. by decree of outside authorities
- b. by decision of outside expert/consultant and some leaders
- c. by majority vote of leaders/officers
- d. by majority vote of members/staff
- e. by consensus of all members
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**19. To what extent do members/staff influence selection of officers/leaders?**

- a. negligible
- b. some extent
- c. large extent
- d. very large extent
- e. always
- f. don't know
- g. not applicable

**20. When the members/staff of the organization have a common problem, who suggests solutions to the problem?**

- a. authorities outside the organization
- b. outside experts/consultants with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**21. Which group has most responsibility for implementing organizational activities/projects?**

- a. outside consultants/contractors
- b. outside consultants/contractors with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**22. Which group contributes money most of the time?**

- a. outside authorities/sources
- b. outside authorities/sources with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**23. Which group contributes the most information used to make decisions?**

- a. outside authorities/sources
- b. outside authorities/sources with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**24. Which group contributes new ideas most of the time?**

- a. outside authorities/sources
- b. outside authorities/sources with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**25. Who is responsible for approving responses to outside inquiries about the organization or its activities?**

- a. outside authorities/experts
- b. outside authorities/experts with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**26. Which group influences most of the time the direction of policies and implementation of the projects?**

- a. outside authorities/experts
- b. outside authorities/experts with some leaders
- c. the leaders/officers
- d. the leaders and some members/staff
- e. the members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**27. To what extent is completing projects quickly more important than taking into consideration everyone's ideas, opinions or concerns?**

- a. always
- b. very large extent
- c. large extent
- d. some extent
- e. not at all
- f. don't know
- g. not applicable

**28. To what extent do members/staff contribute money to the projects and other activities of the organization?**

- a. never
- b. some extent
- c. large extent
- d. very large extent
- e. always
- f. don't know
- g. not applicable

**29. To what extent do members/staff contribute information in the projects/activities of the organization?**

- a. never
- b. some extent
- c. large extent
- d. very large extent
- e. always
- f. don't know
- g. not applicable

- 30. To what extent do members/staff contribute suggestions in the projects/activities of the organization?**
- a. never
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. always
  - f. don't know
  - g. not applicable
- 31. To what extent do members/staff have control over decisions for implementation of organizational activities?**
- a. no control
  - b. some control
  - c. a lot of control
  - d. most control
  - e. complete control
  - f. don't know
  - g. not applicable
- 32. To what extent do members/staff have control over resources for implementation?**
- a. no control
  - b. some control
  - c. a lot of control
  - d. most control
  - e. complete control
  - f. don't know
  - g. not applicable
- 33. To what extent do leaders/officers of your organization respect the ideas and interests of members/staff?**
- a. not at all
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. completely
  - f. don't know
  - g. not applicable
- 34. To what extent are leaders/officers of your organization willing to receive constructive feedback/criticism from members/staff?**
- a. not at all
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. completely
  - f. don't know
  - g. not applicable
- 35. To what extent are the mission, goals and tasks of the organization's work clearly understood by members/staff?**
- a. not at all
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. completely
  - f. don't know
  - g. not applicable
- 36. To what extent do members/staff help one another participate in group discussions, problem solving and decisionmaking?**
- a. never
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. always
  - f. don't know
  - g. not applicable

**37. To what extent are members/staff proud of the organization?**

- a. not proud
- b. somewhat proud
- c. proud
- d. very proud
- e. emotionally invested
- f. don't know
- g. not applicable

**38. To what extent do members/staff consider the organization an important part of their lives?**

- a. not at all
- b. some extent
- c. large extent
- d. very large extent
- e. central part
- f. don't know
- g. not applicable

**39. Which group tends to benefit most from the projects of the organization?**

- a. outside beneficiaries
- b. outside beneficiaries and leaders/officers
- c. the leaders/officers only
- d. the leaders and some members/staff
- e. all or most members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**40. Which group tends to benefit from training/education seminars?**

- a. outside beneficiaries
- b. outside beneficiaries and leaders/officers
- c. the leaders/officers only
- d. the leaders and some members/staff
- e. all or most members/staff
- f. don't know
- g. not applicable
- h. others (specify) \_\_\_\_\_

**41. To what extent is the work of members/staff recognized and rewarded by leaders of the organization?**

- a. not at all
- b. some extent
- c. large extent
- d. very large extent
- e. always
- f. don't know
- g. not applicable

**42. To what extent do projects/activities of the organization benefit members/staff?**

- a. not at all
- b. some extent
- c. large extent
- d. very large extent
- e. always
- f. don't know
- g. not applicable

**43. To what extent are members/staff of the organization generally supportive and cooperative with one another?**

- a. not at all
- b. some extent
- c. large extent
- d. very large extent
- e. always
- f. don't know
- g. not applicable

- 44. To what extent do leaders recognize that collective effort can be more effective than individual effort?**
- a. not at all
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. always
  - f. don't know
  - g. not applicable
- 45. To what extent do members/staff take initiative to identify problems and gather information to correct them?**
- a. not at all
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. always
  - f. don't know
  - g. not applicable
- 46. Who participates in evaluation of the projects/activities most of the time?**
- a. authorities/experts outside the organization
  - b. experts/consultants with some leaders
  - c. leaders/officers only
  - d. leaders/officers and some members/staff
  - e. the members/staff
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 47. Who decides whether a project/activity is successful or not?**
- a. authorities/experts outside the organization
  - b. experts/consultants with some leaders
  - c. leaders/officers only
  - d. leaders/officers and some members/staff
  - e. the members/staff
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 48. To what extent are members/staff involved in the evaluation of projects/activities of the organization?**
- a. not at all
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. always
  - f. don't know
  - g. not applicable
- 49. At what stage are members/staff involved in the evaluation of projects/activities of the organization?**
- a. never
  - b. when the project/activity is finished/completed
  - c. when the project/activity is partially complete
  - d. at the start of the project/activity starts
  - e. during the planning stages of the project/activity
  - f. don't know
  - g. not applicable
  - h. others (specify) \_\_\_\_\_
- 50. To what extent do leaders/officers involve members/staff in improving problems identified in evaluation processes?**
- a. not at all
  - b. some extent
  - c. large extent
  - d. very large extent
  - e. always
  - f. don't know
  - g. not applicable

# Answer Sheet Participation Assessment Tool

**Participant Name** \_\_\_\_\_

**Answers:** Circle the letter corresponding to your answer for each question or write in your response to option "h"/"other":

1. a b c d e f g h: \_\_\_\_\_
2. a b c d e f g h: \_\_\_\_\_
3. a b c d e f g h: \_\_\_\_\_
4. a b c d e f g h: \_\_\_\_\_
5. a b c d e f g h: \_\_\_\_\_
6. a b c d e f g h: \_\_\_\_\_
7. a b c d e f g h: \_\_\_\_\_
8. a b c d e f g h: \_\_\_\_\_
9. a b c d e f g h: \_\_\_\_\_
10. a b c d e f g h: \_\_\_\_\_
11. a b c d e f g h: \_\_\_\_\_
12. a b c d e f g h: \_\_\_\_\_
13. a b c d e f g h: \_\_\_\_\_
14. a b c d e f g h: \_\_\_\_\_
15. a b c d e f g h: \_\_\_\_\_
16. a b c d e f g h: \_\_\_\_\_
17. a b c d e f g h: \_\_\_\_\_
18. a b c d e f g h: \_\_\_\_\_
19. a b c d e f g h: \_\_\_\_\_
20. a b c d e f g h: \_\_\_\_\_
21. a b c d e f g h: \_\_\_\_\_
22. a b c d e f g h: \_\_\_\_\_
23. a b c d e f g h: \_\_\_\_\_
24. a b c d e f g h: \_\_\_\_\_
25. a b c d e f g h: \_\_\_\_\_
26. a b c d e f g h: \_\_\_\_\_
27. a b c d e f g h: \_\_\_\_\_
28. a b c d e f g h: \_\_\_\_\_
29. a b c d e f g h: \_\_\_\_\_
30. a b c d e f g h: \_\_\_\_\_
31. a b c d e f g h: \_\_\_\_\_
32. a b c d e f g h: \_\_\_\_\_
33. a b c d e f g h: \_\_\_\_\_
34. a b c d e f g h: \_\_\_\_\_
35. a b c d e f g h: \_\_\_\_\_
36. a b c d e f g h: \_\_\_\_\_
37. a b c d e f g h: \_\_\_\_\_
38. a b c d e f g h: \_\_\_\_\_
39. a b c d e f g h: \_\_\_\_\_
40. a b c d e f g h: \_\_\_\_\_
41. a b c d e f g h: \_\_\_\_\_
42. a b c d e f g h: \_\_\_\_\_
43. a b c d e f g h: \_\_\_\_\_
44. a b c d e f g h: \_\_\_\_\_
45. a b c d e f g h: \_\_\_\_\_
46. a b c d e f g h: \_\_\_\_\_
47. a b c d e f g h: \_\_\_\_\_
48. a b c d e f g h: \_\_\_\_\_
49. a b c d e f g h: \_\_\_\_\_
50. a b c d e f g h: \_\_\_\_\_

# Scoresheet Participation Assessment Tool

**Participant Name**

\_\_\_\_\_

## Scoring Instructions:

1. Enter the total number of times you circled each letter on your answer sheet.

\_\_\_\_\_ a \_\_\_\_\_ b \_\_\_\_\_ c \_\_\_\_\_ d \_\_\_\_\_ e \_\_\_\_\_ f \_\_\_\_\_ g

2. Multiply the total for each letter using the following formulas and enter the new value:

a x 1 = \_\_\_\_\_

b x 2 = \_\_\_\_\_

c x 3 = \_\_\_\_\_

d x 4 = \_\_\_\_\_

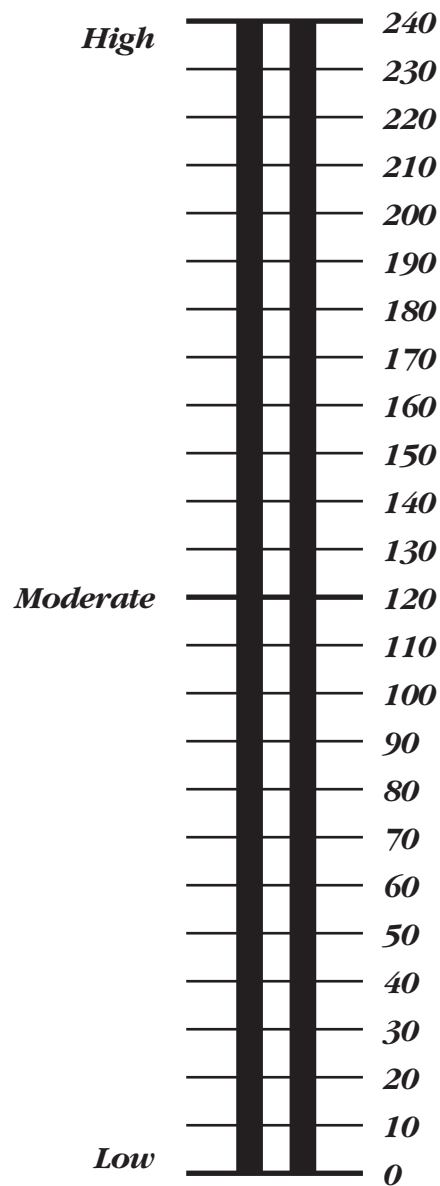
e x 5 = \_\_\_\_\_

f x 0 = \_\_\_\_\_

3. Add the values: **Total** \_\_\_\_\_ This is your final score.

4. Enter your final score on the participation scale.

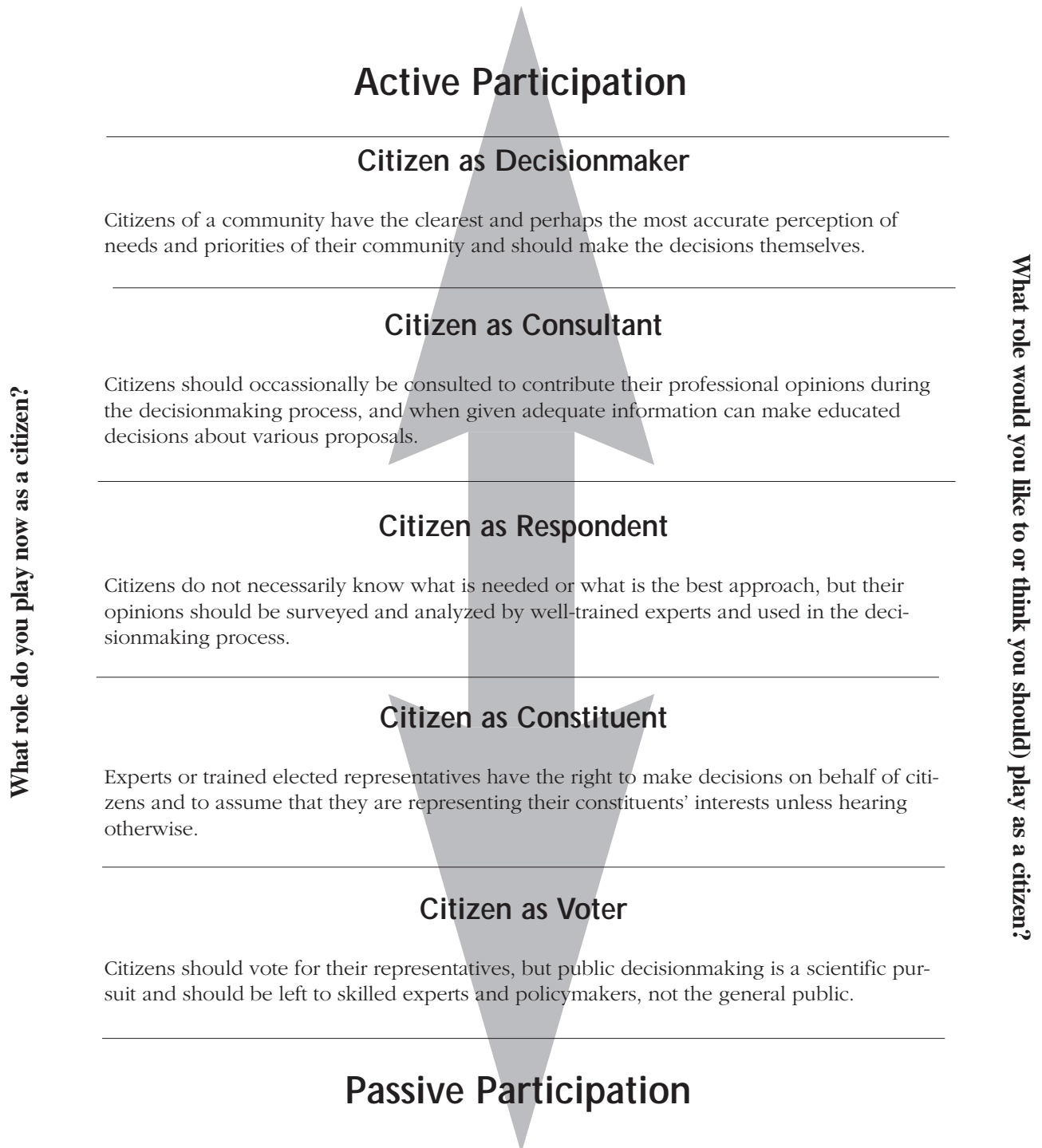
## Participation Scale



## Worksheet Role of the Citizen in Society

Do you see your role as a citizen in society in decisionmaking processes as an active or a passive one?

1. On the left, indicate what role you think you play now as a citizen in society.
2. On the left, indicate what role you think you would like to play or think you should play as a citizen in society.

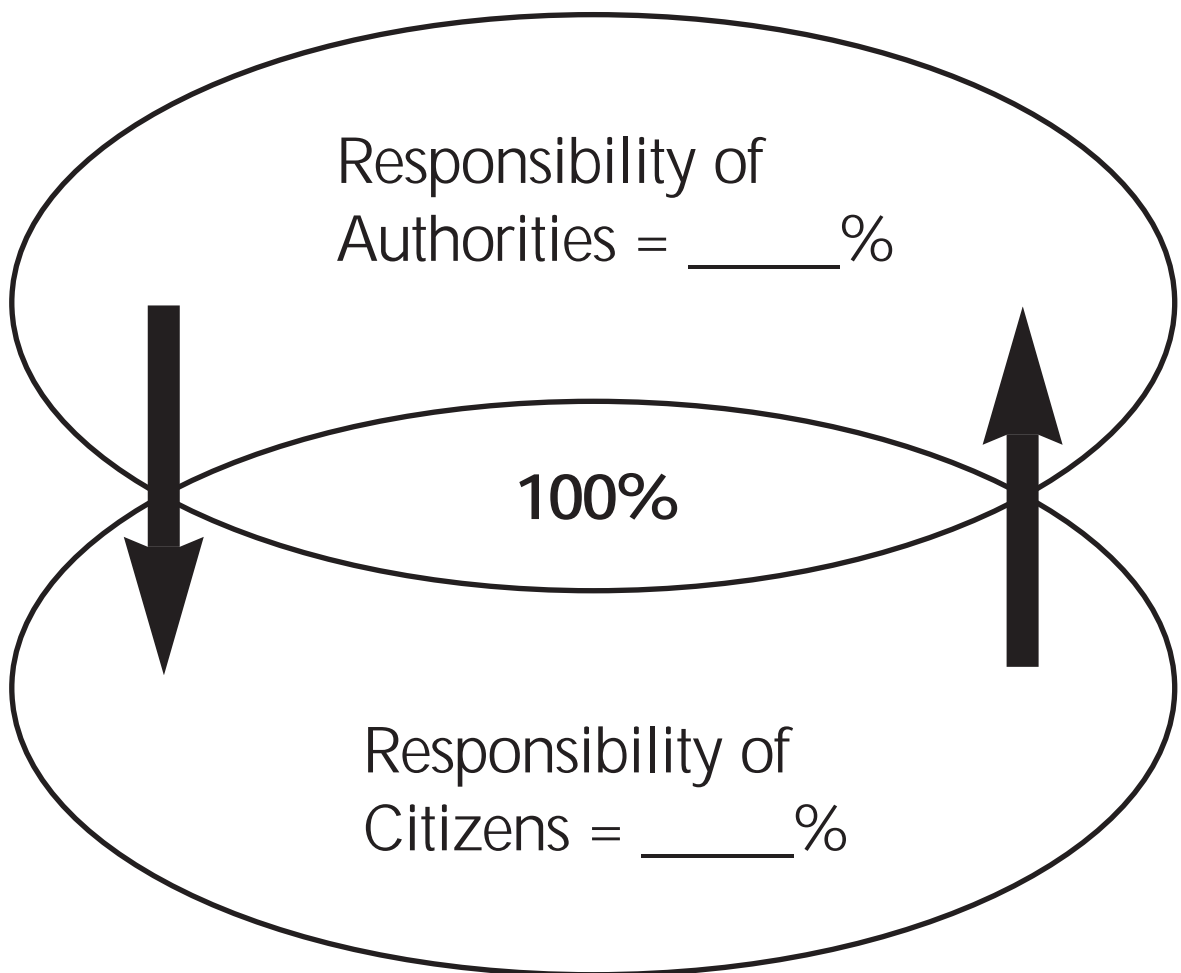




## Worksheet Responsibilities for Participation

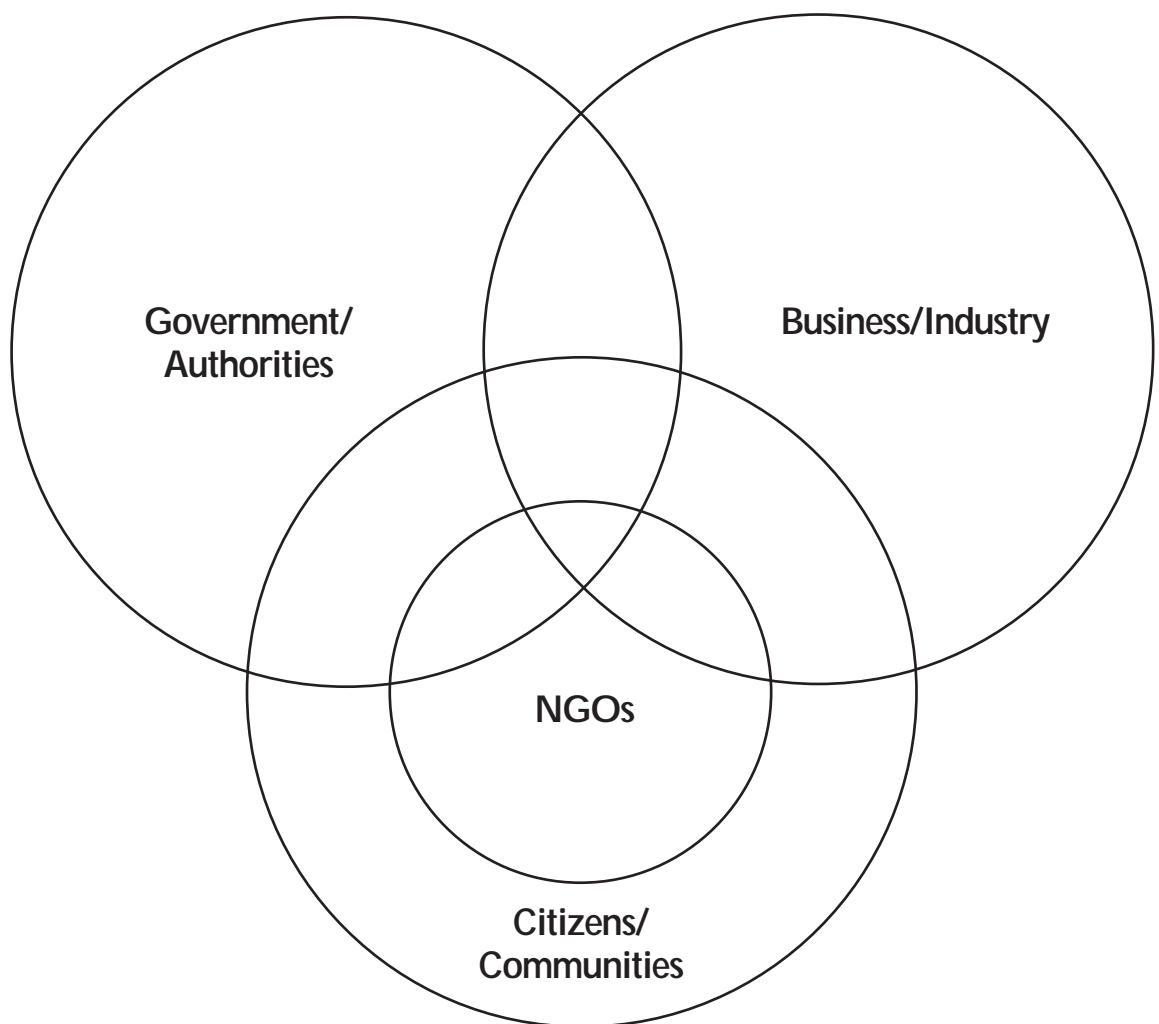
How much of the responsibility of participation is that of authorities to facilitate participation? How much of the responsibility is that of citizens to seek out possibilities for involvement or access?

*Indicate below what percentage of the responsibility for public participation you think belongs to authorities, and what percentage to citizens (total should equal 100%).*



## Worksheet Who is “the Public”?

Who is “the public”? What individuals or institutions within the three sectors of society do you believe constitute “the public”?



## Worksheet Benefits of Public Participation

**DIRECTIONS:** *What are the benefits of public participation to different sectors?  
Write your answers below:*

### BENEFITS TO GOVERNMENT?

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### BENEFITS TO BUSINESS?

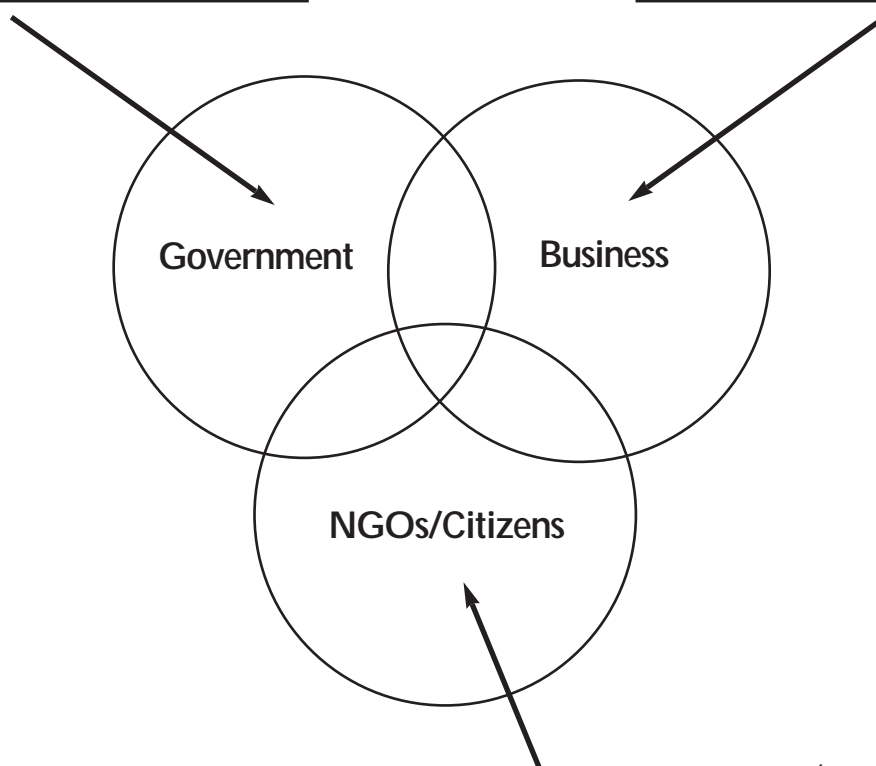
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### BENEFITS TO NGOS/CITIZENS?

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# Benefits of Public Participation

Benefits for NGOs/Citizens	Benefits for Business/Industry	Benefits for Government
<ul style="list-style-type: none"> <li>- provides citizens with an opportunity to influence and impact the environmental decisionmaking process;</li> <li>- enables citizens to gain better understanding and knowledge about the environmental risks and impacts to which they, their families, and their communities are exposed;</li> <li>- increases citizen awareness of how decisionmaking processes work: who makes decisions, on what basis (helps citizens to participate in the future, and helps the development of representational democracy);</li> <li>- fosters greater sense of community awareness, social cohesion, social responsibility;</li> <li>- empowers citizens and helps them to feel they can have a positive effect and influence on concrete conditions in their country/community;</li> <li>- ensures local relevance of decisions and policies and that local knowledge and experience is taken into account in project design and implementation.</li> </ul>	<ul style="list-style-type: none"> <li>- increases knowledge and awareness of impacts of business operations on the environment and surrounding community;</li> <li>- uncovers inefficiencies in production methods, raw material use, or energy consumption that can actually reduce operating costs and eliminate the need to install expensive pollution control equipment;</li> <li>- increases understanding of consumers concerns and how to market products more effectively;</li> <li>- increases access to governmental decisionmaking that affects business directly, through legal or other avenues;</li> <li>- reduces potential for conflicts or legal action with public or government by understanding issues and obligations from their point of view;</li> <li>- reduces likelihood of future delays or expenses by incorporating local issues and concerns early in the project planning process;</li> <li>- improves project bankability by illustrating to funding and financial institutions that participation procedures and guidelines have been followed;</li> <li>- generates creative and locally appropriate solutions;</li> <li>- builds future good relations and trust with community leaders, consumers, the general public, NGOs and the media.</li> </ul>	<ul style="list-style-type: none"> <li>- creates more informed government decisionmaking by incorporating the diverse opinions, values, and ideas and gaining the direct, immediate knowledge of environmental conditions from community members;</li> <li>- improves citizens awareness of issues and increased public understanding of projects and issues involved in decisionmaking, precondition for functioning democratic system and public satisfaction and trust in government institutions;</li> <li>- supplements scarce government monitoring, inspection, and enforcement resources, thus saving time and money, when citizens act as the government's "eyes" and "ears" identifying and taking actions against environmental threats or violations of applicable laws;</li> <li>- strengthens the position of the Ministry of Environment in relation to other government interests and ministries by public reinforcement of MoE's views and ensure government does not ignore environmental concerns;</li> <li>- defuses conflict or opposition to particular government actions and builds broad-based consensus for environmental programs;</li> <li>- saves valuable resources of both time and money, while requiring more public involvement early in the process may delay initially planning and incur additional costs, it prevents unanticipated changes or alterations in the future when final decisions are made;</li> <li>- generates creative and locally appropriate solutions;</li> <li>- builds future good relations and trust with community leaders, consumers, the general public, NGOs and the media.</li> </ul>

## Worksheet Costs of Public Participation

**DIRECTIONS:** *Below are some commonly cited costs or criticisms of public participation. Do you agree? Explain your answer.*

**1. Participation is inefficient.**

Participation is the opposite of administrative efficiency. A decisionmaking process involving as few people as possible would be far more efficient.

\_\_\_ I agree

\_\_\_ I disagree

Why? \_\_\_\_\_

\_\_\_\_\_

**2. Participation wastes precious time.**

Participation requires too much time, extends the decisionmaking process with little or no benefit.

\_\_\_ I agree

\_\_\_ I disagree

Why? \_\_\_\_\_

\_\_\_\_\_

**3. Participation wastes financial resources.**

Participation consumes staff salaries and other limited resources which could be better spent and more productive elsewhere.

\_\_\_ I agree

\_\_\_ I disagree

Why? \_\_\_\_\_

\_\_\_\_\_

**4. Participation doesn't produce concrete results.**

Participation is unreal action. The involvement of the public is a difficult task to plan and produces no concrete results. It makes people feel good, but it doesn't put food on the table or pay the rent.

\_\_\_ I agree

\_\_\_ I disagree

Why? \_\_\_\_\_

\_\_\_\_\_

**5. Participation creates false expectations.**

Participation creates expectations among the public that are not possible to implement. Ultimately this only makes more problems since people become more frustrated.

\_\_\_ I agree

\_\_\_ I disagree

Why? \_\_\_\_\_

\_\_\_\_\_

**6. Participatory Decisionmaking is Irrational.**

Decisionmaking should be based on concrete and factual information collected by educated and informed experts. Participation is irrational and is based on consensus, opinions and personal problems or priorities, not scientific examination.

\_\_\_ I agree

\_\_\_ I disagree

Why? \_\_\_\_\_

\_\_\_\_\_

**7. Participation is Elitist.**

Participation is an elitist concept, an idea only for the wealthy, "well connected" or powerful to pursue. It is not possible for the average citizen.

\_\_\_ I agree

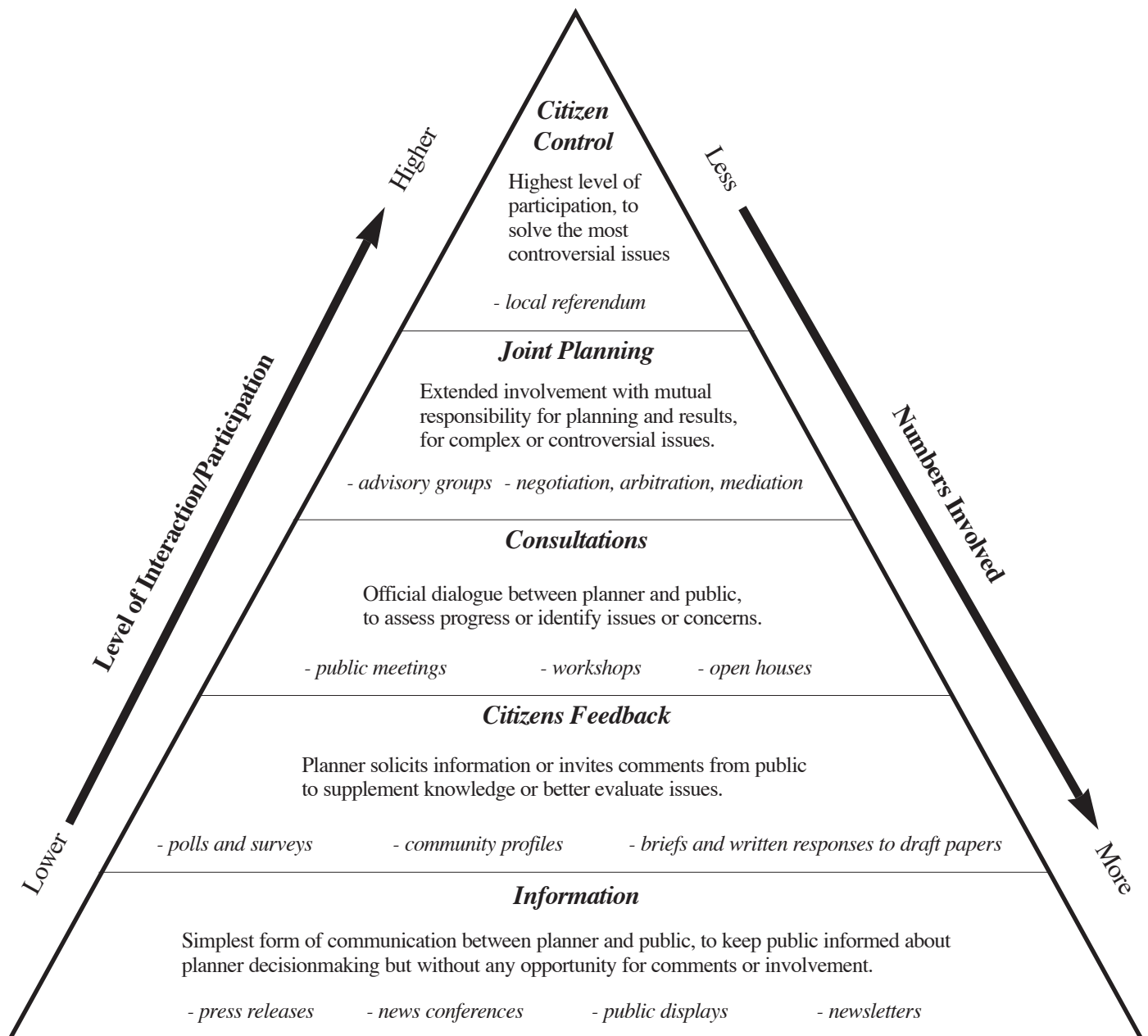
\_\_\_ I disagree

Why? \_\_\_\_\_

\_\_\_\_\_

## Diagram Levels of Public Participation

Different levels of public participation allow for different levels of involvement of the public in the decisionmaking process and different numbers of persons. Generally, as the level of involvement increases, the numbers of individuals involved decreases.



## Worksheet Public Participation Techniques

**DIRECTIONS:** What techniques of public participation do you know? What level of participation do they promote? Indicate as many as you can in the chart below.

[illegible]

## Discussion Public Participation Methods

**DIRECTIONS:** *What is the difference between a technique and a method of public participation? What do the different techniques you identified on the previous page have in common?*

### 1. Legal Methods

Legal methods of public participation are provided as basic rights through the constitution.

For example:

- right to know (access to information)
- right to freedom of expression
- right to freedom of speech
- right to assembly/association
- right to healthy environment

### 2. Nonformal Methods

Nonformal methods of public participation are nonlegal (not illegal!) forms.

For example:

- **educational** (i.e. publishing newsletters, organizing workshops, competitions, camps, exhibitions, working in schools, bike tours, seminars, electronic networks, campaigns, etc.)
- **direct pressure** (i.e. sending petitions, complaints, collecting signatures, demonstrations, use of media, etc.)
- **lobbying** (i.e. organizing public hearings, consultation, roundtables, fora, elaborating alternative policies, influencing policymakers, etc.)
- **servicing** (i.e. promoting public participation or actions of other NGOs, capacity building or training, hotlines, green telephones, information centers, cooperative networks or coalitions, etc.)
- **complementary/semi-legal** (developing alternative participation procedures such as voluntary scoping, hearings on EIA, post-project monitoring, citizen committees to control permitting processes, etc.)



# **Module 3:** Developing a Public Participation Strategy



## Module 3: Developing a Public Participation Strategy

### **PURPOSE**

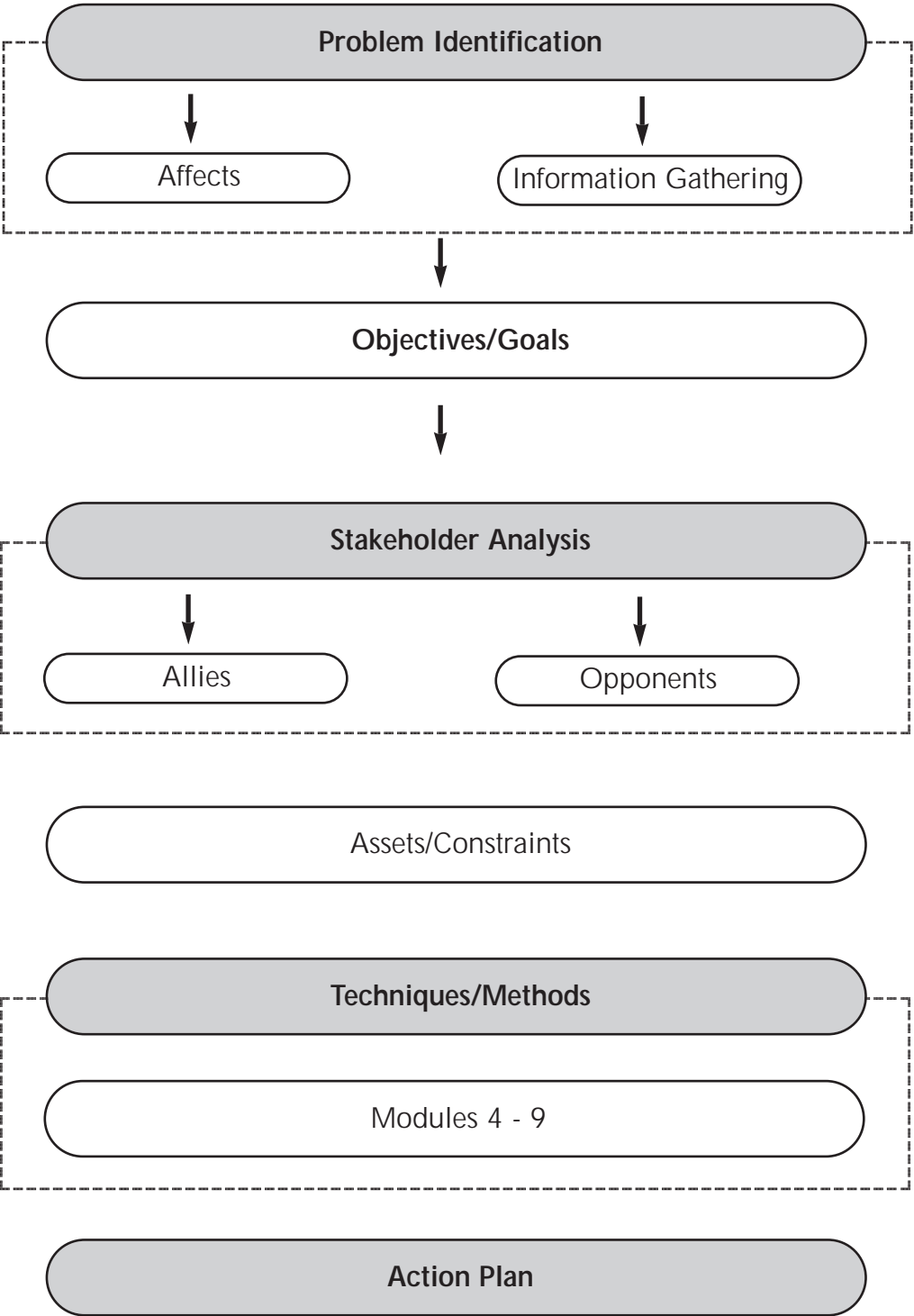
The purpose of Module 3 is to guide participants through a strategic thinking process designed to help them critically examine the environmental problem they face and develop a comprehensive public participation action strategy to address the problem. Creating an individual participation action strategy is the central task for participants throughout the training. Participants are encouraged to examine the contents of each subsequent module and determine its relevance to developing their own strategy for action.

### **OBJECTIVES**

At the end of this module training, participants should have:

- an understanding of the process of problem identification and a succinct description of their own environmental problem and its affects;
- an understanding of the goals and objectives they hope to achieve for their own case;
- an understanding of the process of stakeholder analysis and a detailed list and description of all actors involved either directly or indirectly in their case;
- an understanding of a variety of public participation techniques, both legal and nonformal instruments, and their applicability to their own case;
- an action strategy for their specific problem or case.

**Contents:** Developing a Public Participation Strategy



## Worksheet Case Selection

### **SELECTING A CASE:**

The intention of this module is to develop a public participation strategy for a given environmental problem. The hope is that all participants will have come to the training with their own real problem, however, in some instances you may need to think of a hypothetical case for the exercise. In selecting an appropriate case, whether real or hypothetical, you should keep the following criteria in mind:

1. The problem should be an environmental one.
2. The problem should be practical, realistic and manageable.
3. The problem should consist of some public participation component.
4. The problem should be one you know well. You should have access to information about the case, know relative detail about the issues, players and cause of the problem.
5. The problem should be one in which either you or your organization is involved.

## Worksheet Problem Identification

### **SAMPLE PROBLEMS:**

1. A local factory is dumping waste into the river.
2. A company wants to build a landfill in your neighborhood.
3. A train regularly transports liquid gas on an old train track through a residential neighborhood.
4. An airport is causing a high amount of noise and vibration to neighboring communities.
5. Someone has begun dumping waste by the roadside.
6. Someone has begun cutting down large areas of trees to construct buildings on undeveloped land.

### **Your Problem:**

*In one sentence, briefly state your problem:*

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## Worksheet Effects or Potential Effects

### SAMPLE EFFECTS:

1. *Problem:* A local factory is dumping waste into the river.  
*Effects:* The water is no longer drinkable; local citizens are getting sick.
2. *Problem:* A company wants to build a landfill in your neighborhood.  
*Effects:* The proposed landfill would be located too close to the residential area, could affect drinking water and would smell.
3. *Problem:* A train regularly transports liquid gas on an old train track through a residential neighborhood.  
*Effects:* The community is concerned about potential accidents, the contents of the gas are toxic and a spill could have a serious health threat.
4. *Problem:* An airport is causing a high amount of noise and vibration to neighboring communities.  
*Effects:* Noone can sleep.
5. *Problem:* Someone has begun dumping waste by the roadside.  
*Effects:* The area is dirty and is attracting rats and dogs.
6. *Problem:* Someone has begun cutting down large areas of trees to construct buildings on undeveloped land.  
*Effects:* The forest will be permanently destroyed and the ecosystem ruined.

### YOUR PROBLEM:

Briefly describe the primary effects/impacts or potential effects/impacts of your problem:

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## Worksheet Information Checklist

Generally, the more information you have about an environmental problem, the easier it will be to convince other people and the government that the problem exists and that it deserves attention. To obtain more information and to create as complete a picture of the problem as possible, you can use a variety of sources. Refer to Chapter 2: “How to Get Started” in the *Manual on Public Participation in Environmental Decisionmaking*, (English version pages 74-78) and try to answer as many of the initial questions as possible.

In what areas do you need more information? Make a note of which questions you cannot answer or need more information:

### **GOVERNMENT**

### **THE COMMUNITY**

### **INDUSTRY**

## Worksheet Objectives/Goals

What objective(s), if achieved, will help solve the problem(s) and most benefit your community's or country's environmental health? Based on all the information you have about the environmental problem, determine the long-term goal and the short-term objectives which in your view must be achieved to help solve the problem:

Such goals or objectives may include:

1. **Eliminating the problem's source**, such as a closure of a factory, denial of permission to construct a facility, a ban on certain substances, or a ban on the clear-cutting of trees.
  2. **Placing limitations on the problem's source**, such as more stringent permit conditions or restrictions on the source's location.
  3. **Establishing areas of protection from further destruction**, such as a nature preserve.
  4. **Securing adoption or amendment of laws and regulations** by the government that will protect you from the dangers created by the problem.
  5. **Ensuring the government's proper implementation or enforcement** of environmental laws and regulations.
  6. **Increasing public education and awareness** about the problem and its dangers.
- 

### YOUR PROBLEM:

Circle the numbers of the type of objective(s) above you would like to achieve to address your problem.

What is your primary goal?

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What are your short-term objectives?

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## Worksheet Stakeholder Analysis

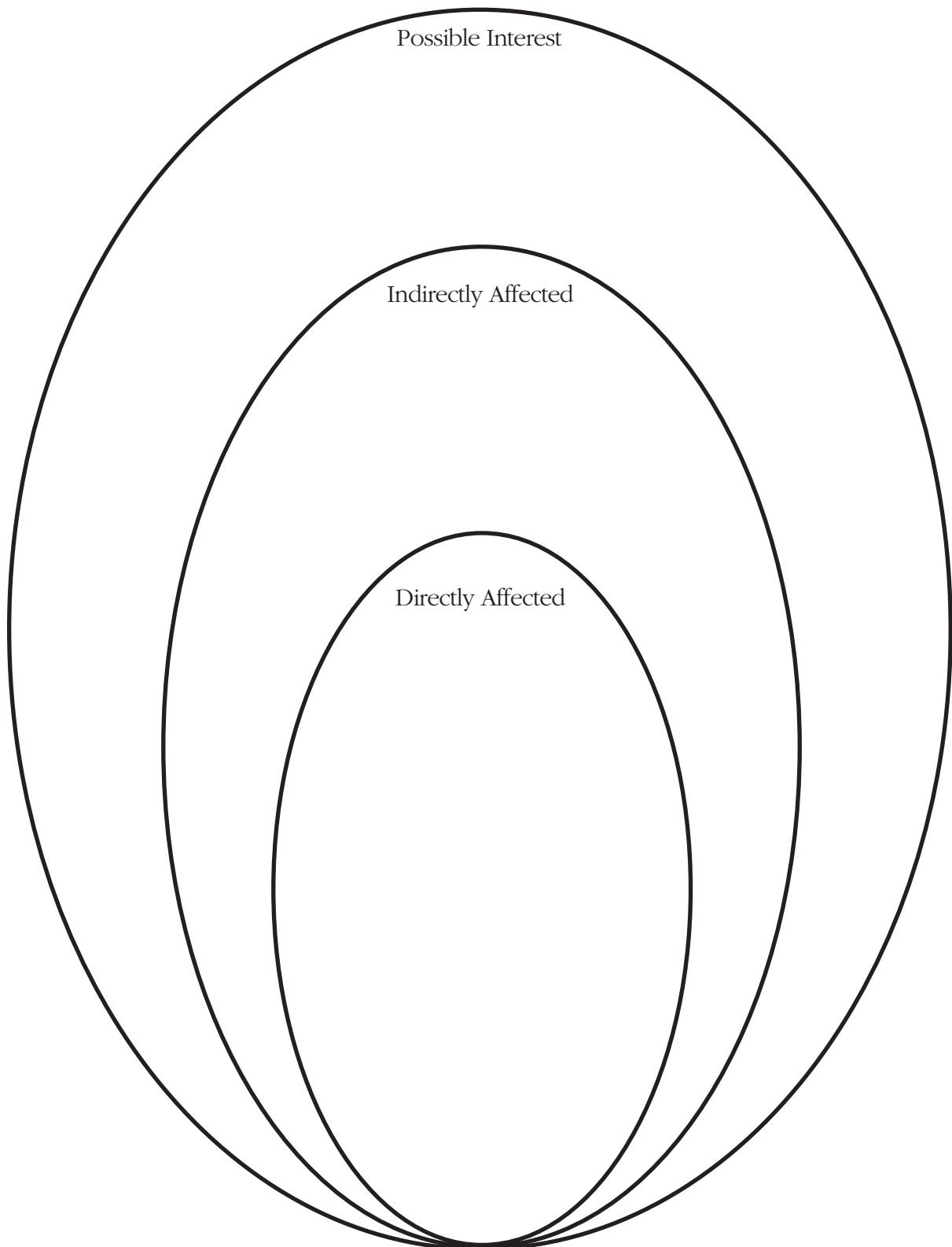
Stakeholders are those individuals or institutions who are affected by the problem, either directly or indirectly, either positively or negatively. Identifying these actors is a difficult, but necessary, process before appropriate strategies can be identified for a problem

*In the diagrams on the following pages identify all the stakeholders in your problem/project. The following questions should help guide you in identifying those relevant parties:*

- Who is responsible for or caused the problem?
- Who in the community is directly affected by the problem?
- Who in, near or outside the community is indirectly affected by the problem?
- Who might be affected, whether positively or negatively, by the problem?
- Who cares about this issue enough to join in or help?
- Who are the “voiceless” for whom special efforts may have to be made?
- Who are the representatives of those likely to be affected?
- Who may also have the same problem in other communities/countries?
- Who would be interested to know about the problem?
- Who is responsible for monitoring/regulating the problem?
- Who has the power to give you what you want?
- Who has power over the people who have power to give you what you want?
- Who are your opponents?
- In whose benefit is it to maintain status quo?
- Who is likely to mobilize for or against what is intended?
- Who can contribute financial and technical resources?
- Whose behavior has to change for the effort to succeed?

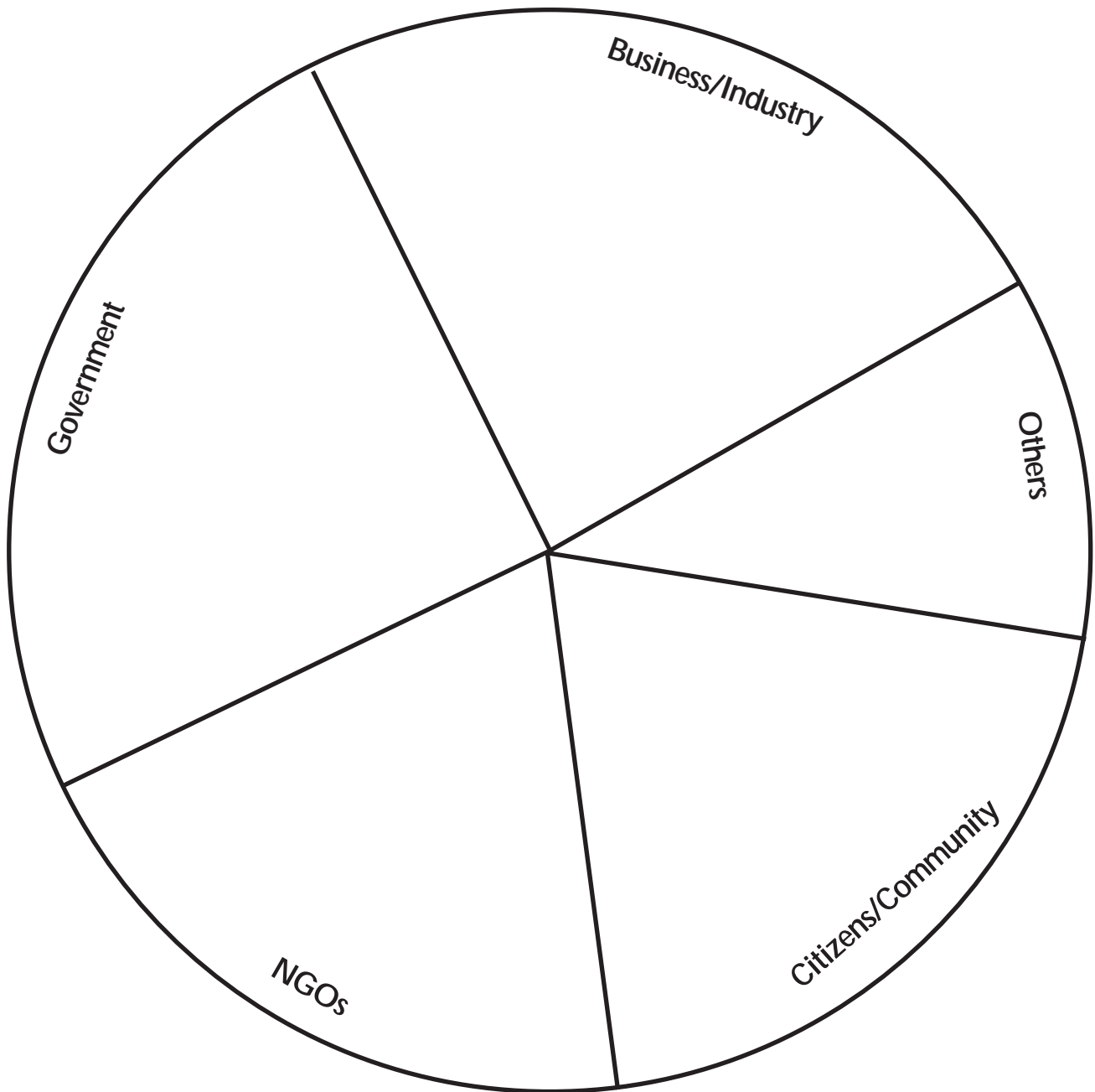
## Worksheet Stakeholder Analysis by Impact/Interest

Identify your stakeholders in the following categories:



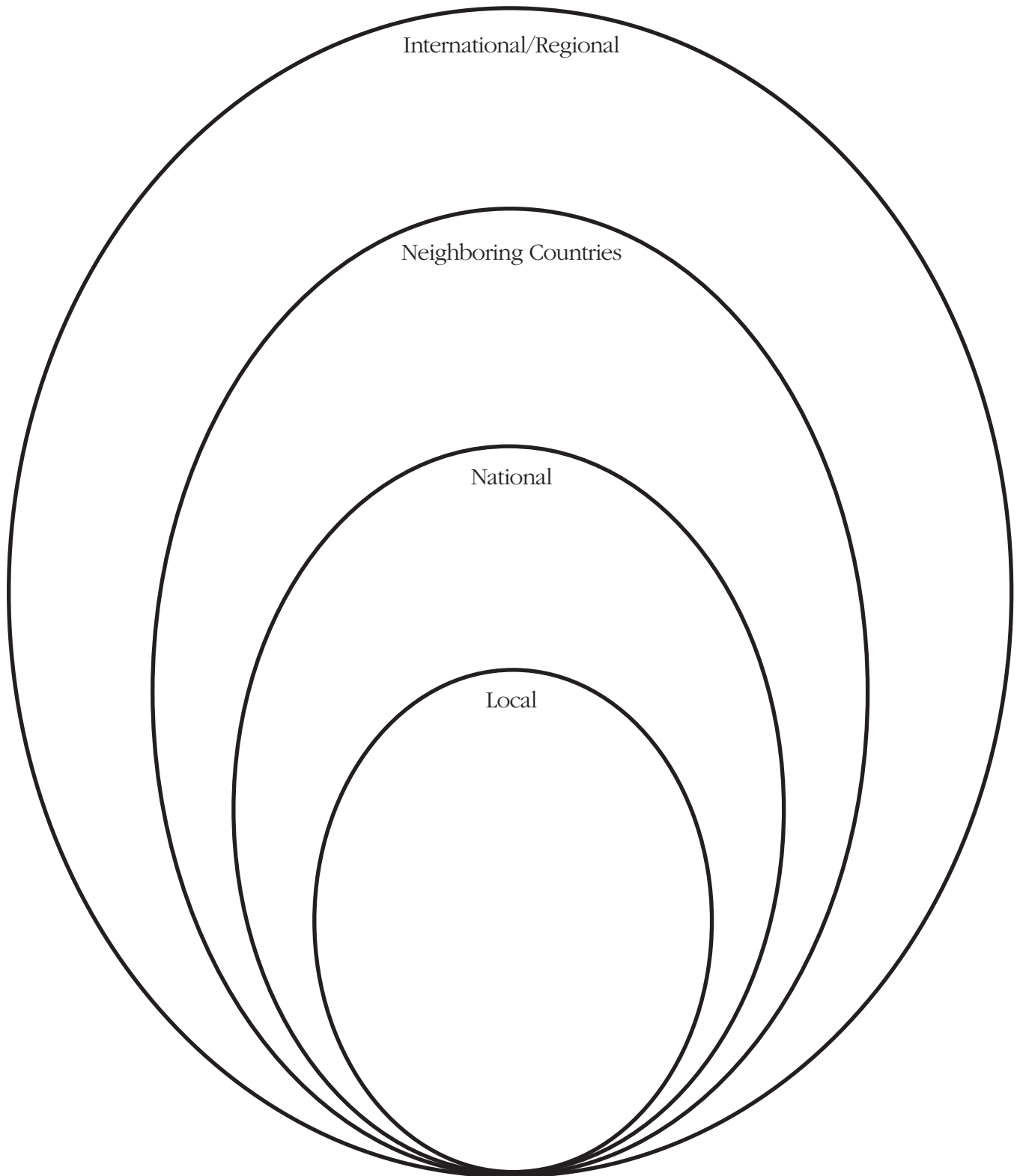
## Worksheet Stakeholder Analysis by Sector

Identify your stakeholders in the following sectors:



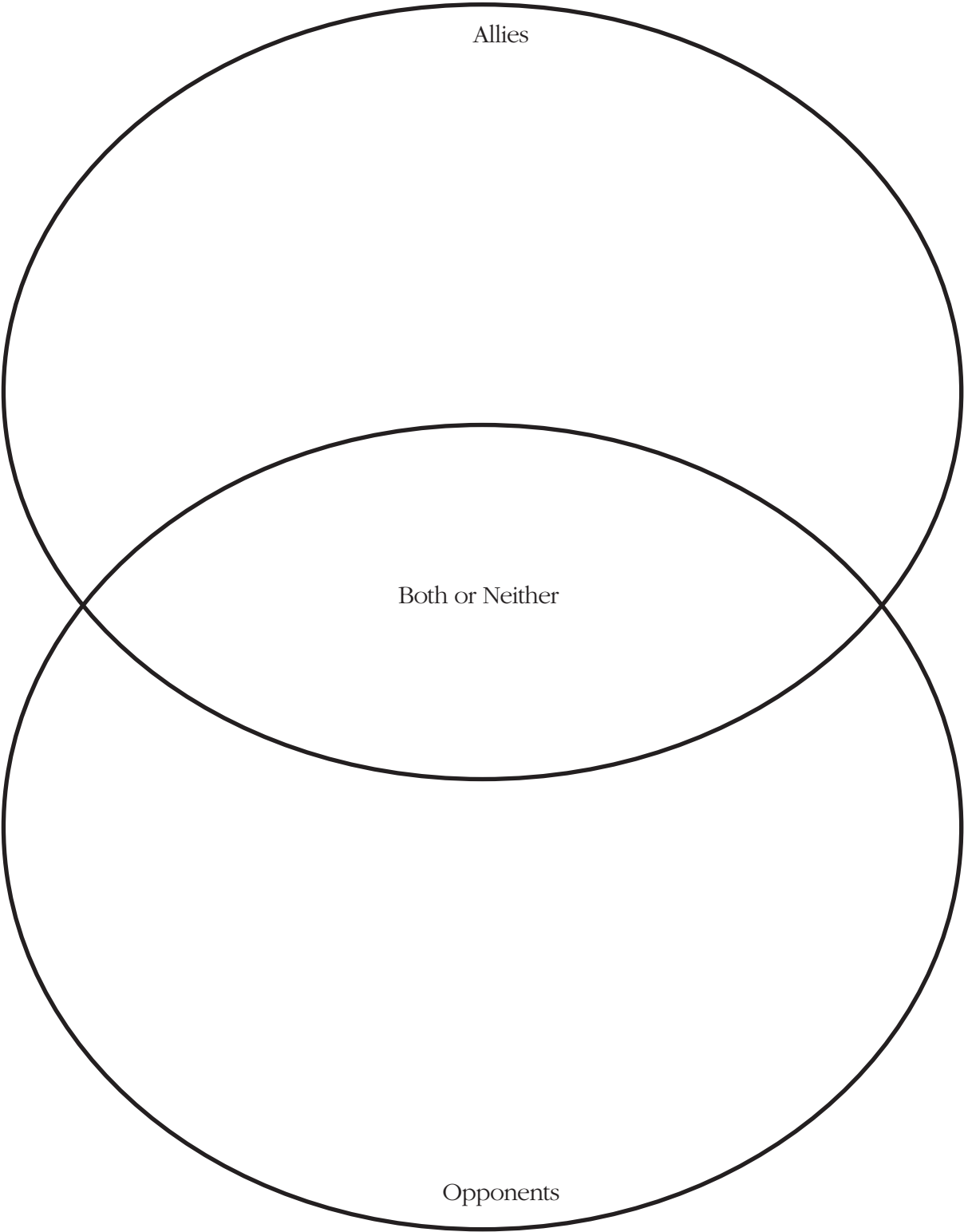
## Worksheet Stakeholder Analysis by Geographic Location

Identify your stakeholders by geographic location:



**Worksheet** Stakeholder Analysis by Allies/Opponents

Identify your stakeholders by allies and opponents:



## Worksheet Techniques/Methods

What public participation techniques in the subsequent module(s) are useful in addressing your objectives? What level of participation do they promote? What stakeholders do they address?

<i>Level of Participation</i>	<i>Citizen Control</i>									
	<i>Joint Planning</i>									
	<i>Consultations</i>									
	<i>Citizens Feedback</i>									
	<i>Information</i>									
<i>PP Method</i>	<i>Nonformal</i>									
	<i>Legal</i>									
<i>PP Technique</i>										
<i>Objective</i>										

# **Module 4:**

## **Public Participation in National Governmental Decisionmaking**



## Module 4: Public Participation in National Governmental Decisionmaking

### PURPOSE

The purpose of Module 4 is to introduce participants to options and possibilities for public participation in the environmental decision-making processes at the national level in Bulgaria. The objective of the module is not to *prescribe* methods for taking part in the decisionmaking processes at the national level. Instead, the intention is to *suggest* options that are available for participation within the existing system. The module first comments on the existing rules for public participation at the national level -- of use even for those participants that have never tried to gain access to the central authorities. Second, the module identifies some ways these existing rules are or can be applied in Bulgaria.

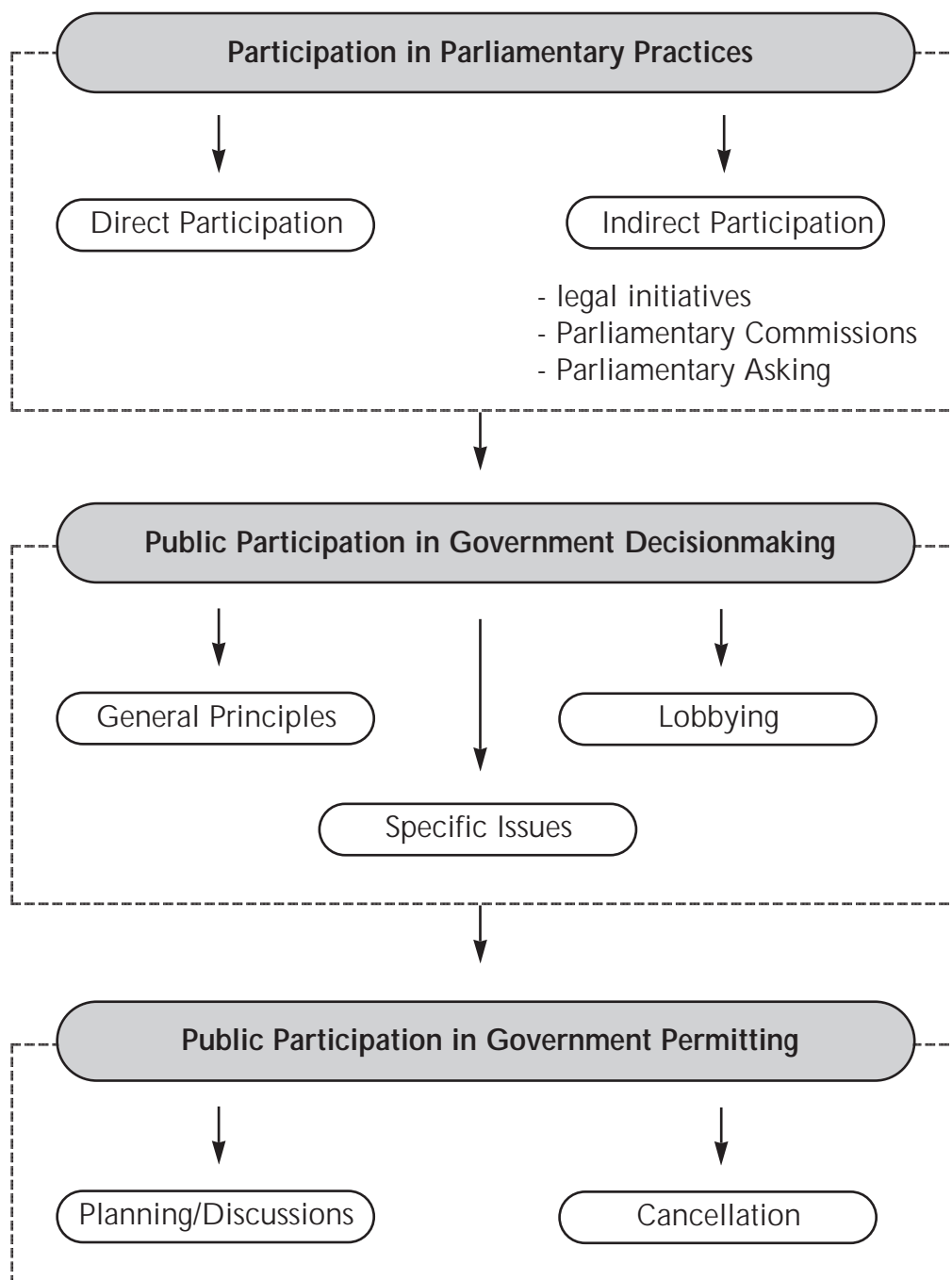
### Objectives

At the end of this module training, participants should have an understanding of the following methods and how to apply them to their own public participation strategy:

- direct and indirect public participation in parliamentary practices, through legal initiatives, Parliamentary Commissions and Parliamentary asking;
- requesting information from the Council of Ministers and from individual Ministries;
- influencing decisionmaking processes on specific issues;
- lobbying the government;
- influencing the permitting process.



## Contents: Public Participation in National Decisionmaking



## Introduction

Module 4 presents a short overview of the possibilities for public participation in the activities of the central authorities in Bulgaria. Public participation at the national level is separated from that at the local/municipal level (Module 5) due to several peculiarities that exist for public involvement at the state level in Bulgaria. First, the central authorities are endowed with far more power than the local authorities, and therefore, any decision taken in favor of the environment at the central level effects a much larger area and concerns far more people than do local decisions. Second, decisions made at the central level are much more “stable” than those at the local level, in that the legal possibilities to abolish them are much more restricted. In other words, once a decision is made at the central level, it is far more difficult for authorities to change them.

*“... central authorities are endowed with far more power than the local authorities...”*

On the other hand, the activities of central authorities in Bulgaria also present some “difficulties,” especially for smaller NGOs or businesses. Access to central authorities is generally more difficult compared to that to local authorities. This fact alone makes lobbying of central officials practically impossible for those who do not have personal links with central officials. Furthermore, the control of the central authority’s activity is often connected with several agencies or levels of power. This makes the process of collecting information about the central authority’s work particularly difficult. Under these circumstances, only the politically and economically “stronger” institutions will succeed to access and influence decisionmaking at the central level, leaving “smaller” institutions isolated from the process.

The above mentioned difficulties and obstacles can be overcome only through **cooperation**. First, Bulgarian NGOs and small businesses must cooperate in an effort to pressure for clear and obligatory rules for the work of central authorities, including more procedural guarantees and equal rights of access and participation for the “smaller” participants in political and economic life. Second, there must be cooperation among all parties in the processes for access to more information about the central authority’s activities. The more knowledge our society has about the central authority’s work, the more optimal and environmentally-friendly will be the government’s decisions.

*“... difficulties and obstacles can be overcome only through cooperation...”*

## 4.1 PUBLIC PARTICIPATION IN PARLIAMENTARY PRACTICES

Generally speaking, Bulgarian citizens -- whether affiliated with businesses or NGOs -- can take part in the Parliamentary decisionmaking processes in two ways:

- *Direct Participation*: Directly, citizens can take part via their rights as citizens.
- *Indirect Participation*: Indirectly, citizens may take part through rights belonging to other entities (i.e. groups of deputies, trade unions, state authorities, etc.).

### 4.1.1 Direct Participation

There is, however, no possibility currently in Bulgaria for direct public participation in parliamentary practices, so this module focuses on introducing participants to a number of indirect tools for public participation in the work of the Parliament.

### 4.1.2 Indirect Participation

Within the parameters of indirect participation, interested parties can only request entities endowed with the respective rights to act in one or another way on their behalf. Indirect public participation implies that the interested parties would utilize **nonformal tools** of involvement: lobbying, protest actions, petitions, etc. rather than legal methods used for direct participation.

#### a. Legal Initiatives

Legal initiative, according to the Bulgarian Constitution, belongs to the Council of Ministers and to elected MPs. Interested parties may **prepare drafts of laws** (see example, right) and may try to suggest the introduction of these drafts in the Parliamentary Commissions for discussion and finally for adoption as laws by the Parliament.

Interested parties can also **submit written opinions on prepared drafts of laws** which are already in course of discussion in the parliamentary commissions.

Another very interesting possibility for action is the help that interested parties can offer to MPs in their work in Commissions, either through **expert advice** (see example, right) and specialist help or through some form of **activist support**.

The business sector in Bulgaria normally influences the work of Parliamentary Commissions through specialists -- both MPs and members of business managing bodies. Smaller businesses typically create associations and try to influence the commission's work through the same channels used by environmental NGOs.

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#### Case 4.1

*An example of public participation in the preparation of the legislation is that of the work conducted by the Ecoglasnost team of experts in 1991 in the preparation of the new Environmental Protection Law in Bulgaria.*

*An example of expert support offered to an MP is that of Professor Ivan Uzunov, a specialist in nuclear energy, to the Ecoglasnost MPs, regarding the position of the MPs in the Parliamentary Commission for Energy. Ecoglasnost struggled against the inclusion of elements of the Vienna Convention in Bulgarian legislation since it provided little protection in case of nuclear accident.*

*What examples do you know?*

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### **b. Participation in the Work of Parliamentary Commissions**

The work of Parliamentary Commissions sometimes includes the resolving of problems which are not entirely “ecological,” by nature, but involve more or less ecological issues. Public participation in these cases can include some **specialist or public support** to advise the Commission on accepting a position which may be more “ecological” in approach whether in the short or long term.

### **c. Direct Involvement in the Work of Parliamentary Commissions**

This form of public participation supposes that there are not MPs that are enclined to support the cause of participation, and thus the interested parties must find their own way for collecting information and for access to the sessions of Commissions.

**Article 27 of the Regulation on the Activity of the National Assembly (RANA)** states that the sessions of Parliamentary Commissions are to be announced at least 24 hours before the sessions. **NOTE:** In the lobby outside the chamber where MPs hold their Commission sessions in Sofia at Blvd. Donducov, No. 4, a list is posted of the parliamentary Commission sessions. Interested parties can **ask to know the agenda of the sessions**.

**Article 26** of the RANA states that the sessions of the Parliamentary Commissions are open. So the interested party can **ask to be present at the sessions**. One problem, however, is that this right comes with no legal guarantees. Interested parties have to also be allowed to enter the room where the sessions are held. The right to be present at Commissions’ sessions exist and interested parties can ask to be allowed to follow the sessions. A Parliamentarian’s willingness and openness too participation is one good criteria for assessing the quality of his/her work.

The third suggestion concerning the direct involvement of the public in the decisionmaking processes of the Parliament would be to **ask for and find the statutes of the different parliamentary groups**. Any parliamentary group has it’s own statute which regulates the relations between the parliamentarians and other persons and institutions. If within these statutes are included provisions about the relations with the public, these provisions can be used by the interested parties as a basis for involvement.

### **d. Parliamentary Asking**

Parliamentary asking is one form of indirect involvement in the decisionmaking process of the Parliament. The MPs can ask both the Council of Ministers and Ministers for responses to questions as is guaranteed under **Article 90, Line 1** of the Constitution. Interested parties can **approach individual MPs** and request them to ask such questions of other decisionmakers and bodies. Obviously the personnal attachment of an MP in question to environmental issues should be taken into account. In order to support such allies,

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#### **Case 4.2**

*An example of of public participation in the work of a Commission is that of the suggestion made by Ecoglasnost members for the creation of a subcommission for the Environment. Ecoglasnost members proposed the subcommission in order to address Sofia’s water problems at a time when the Commission for the Environment was deliberating the Government’s proposed ammendment of Article 23 D of the EPL. This article has since been adopted, stating that for some development projects there can be no EIA study. The Ecoglasnost suggestion for a subcommission was intended to guarantee that a report would be submitted, illustrating that the Sofia water problem could be resolved in the framework of the actual legislation and without the then promoted government project “Djerman-Skakavitza.” The final goal of the report was to show that there was no possibility of changing the EIA law. Unfortunately, the report has not been taken into account and the ammendment was accepted by a parliamentary majority.*

*What examples do you know?*

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interested parties can lobby different MPs in order to help them with the necessary materials and the necessary motivation for asking relevant questions.

## 4.2 PUBLIC PARTICIPATION IN THE GOVERNMENTAL DECISIONMAKING PROCESS

### a. General Rules and Principles

There are no special rules for public participation in the governmental decisionmaking process in Bulgaria, so here we can only mention some general rules and principles.

Interested parties can first **ask for information about what is being prepared in the Council of Ministers (CM) or in any of the Ministries**. This information can be asked for on the legal basis provided by **Article 8, Paragraph 3** of the EPL:

“The information about the state of the environment includes: (Paragraph 3): data about the activities and the actions, undertaken in order to protect and to recover the state of the environment.”

Interested parties can then **analyze the content of official governmental documents and prepare alternatives, suggestions or comments** to these documents, declaring a position on the issue. Parties can then **submit the documents to the government** and an action for supporting (or challenging) the governmental action can be organized.

### b. Influencing Specific Issues

Interested parties can also exert influence on the central government in connection with specific, concrete issues. According to **Article 107** of the Constitution, the CM abolishes those acts of the Ministers which are not right or which are not legally correct.

The CM is the main governing body in Bulgaria, which has the task of bringing into reality the laws and the Constitution. Therefore, when interested parties come across a ministerial action which is not in conformity with the law or with the Constitution, there is an option for **asking the CM to cease the illegal activity**. It is important also to mention the power of the Minister of the Environment to stop the acts of the Ministries and the Municipalities that are contrary to the EPL as stated in **Article 28, Line 2** of the EPL. At the time of this writing, however, this legislative option has never been used by the Minister of the Environment.

Interested parties can **collect information about illegal activities** either through official procedures for collecting information, as described in **Articles 8 - 14** of the EPL, or through less formal ways (i.e. documents, issued on other occasions, witnesses and others).

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### Case 4.3

*An example of such Parliamentary asking in the environmental field is the question asked by the UDF MP, Edwin Sugarev, regarding the construction of the water supply system “Rila-Skakavitsa.”*

*What examples do you know?*

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### Case 4.4

*An example of such public action for challenging a governmental decision in Bulgaria is the protest action taken against the government for its decision to propose the amendment of the EPL to exclude some projects from the EIA procedure. Ecoglasnost, The Green Patrols, the Green Parliament and other NGOs protested the proposal and later the amendment, when the proposal was voted by the Parliament.*

*What examples do you know?*

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A good example to illustrate the use of documents issued on other occasions is the following situation: if, for example, we are interested in the quantity of toxic waste imported in a certain shipment into Bulgaria, we can ask information about the declared quantities of toxic waste and the permit to import such toxic waste. This would be the official information asked through the mechanism, provided in **Articles 8 - 14** of the EPL. Interested parties can also get information about the imported toxic waste through invoices, issued for payment (in which the quantity of the “goods” might be mentioned) or through the witnesses of the drivers who have transported the toxic waste; or through the witnesses of the personel who have disloaded the toxic waste; or through the customs declarations submitted by the importer of the toxic waste.

In discussing these actions, it is important to say that interested parties must **research and understand thoroughly the powers of different ministries** (see Box 4.1, below).

Since it is impossible to know every field of activity on which interested parties will wish to focus, we suggest that interested parties **study profoundly the prerogatives of the Minister of the Environment and of the Regional Inspectorates for Environment** as outlined in **Articles 24 - 27** of the EPL. It will be important also to **know the prerogatives of the Minister of the Health - Article 15 - 22** of the **Law on Public Health (LPH)**. It may also be wise to **consult a lawyer**.

The best way for proceeding would be to:

- **inform the empowered minister** (or agency) about the illegal situation and to ask for intervention by the authorities;
- **inform the CM and to ask that the illegal ministerial act be abolished**. Paying close attention to the ministerial acts and identifying the most appropriate information sources are the two best ways to monitor and exert control over the administration’s activity.

Due to the difference in timing of passing the EPL and LPH law, and the lack of practice, there is also some confusion about the division of powers between the different ministries. Thus it is unclear whether the MoE can have more power than the Forest Committee in the protection of biodiversity in the forests.

### **c. Lobbying the Government**

Interested parties may also directly and actively **lobby the government** to advocate certain issues or processes that are not explicitly provided as prerogatives of the government but that may have profound “ecological” effects. The lobbying itself can be done in a variety of ways.

### **Case 4.5**

*A good example of how the CM can be provoked to act is the case of the Green Patrols' discovery of illegal timbering activities in the Rhodopes region. The Green Patrols obtained a copy of the local plan for timbering, which has the force of a law about the timbering. With the help of witnesses, the Patrols were able to prove the existance of illegal timbering. They also obtained documents, signed by the director of the local timbering agency, which explicitly prescribe the illegal timbering. The CM was informed about the activity and issued an order to stop it.*

*Another example, again from the practice of the Green Patrols, was the action to stop illegal waste disposal in the region of Etropole, in Northern Bulgaria. The protest action was backed by a journalist, who prepared and aired a short piece on TV about the illegal waste disposal. After the airing, the CM intervened and the illegal waste disposal was closed.*

*What examples do you know?*

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### **Box 4.1**

Primary ministries with some authorities in environmental decisionmaking:

- Ministry of Environment (MoE)
- Ministry of Health (MoH)
- Ministry of Agriculture (MoA)
- Ministry of Industry (MoI)

Lobbying can also be done through nonformal approaches, many of which are within the reach of most all citizens. Lobbying can be indirect and utilize very creative methods to reach the broader public and decisionmakers. Lobbying can be made through cultural or sporting events, for example, using celebrity football players or performers to catch the attention and send a message to the public and to policymakers about environmentally friendly positions. Interested parties should utilize whatever connections they have, whether direct or indirect, to reach key policymakers, including relatives, friends, colleagues or acquaintances. Module 9 addresses additional methods for challenging decisions and decisionmaking processes of public and private institutions.

### 4.3 GOVERNMENTAL PERMITTING PROCESS\*

\* The procedure for issuing the EIA act is discussed separately in Module 7.

In the environmental field, there is only one Act other than EIA legislation to which we can say interested parties can appeal – the **Land Use Plan (LUP)**. Generally speaking, the LUP contains provisions about what facilities/houses, blocks of flats, or industrial facilities will be constructed in a given area and in what volume (for example: blocks of flats, maximum 15 meters high). The LUP generally defines the proportions of how much industry, residential (houses and blocks of flats) and green areas there should be in a given part of the city. The peculiarity of this plan is that once it is adopted, it becomes the “local rule” for the use of land; and this local rule is applied parallel with the centrally adopted laws and regulations. For the procedure of the preparation and the enactment of the LUP, there is an explicitly stated possibility for appeal. The LUP can be appealed if it does not conform with the legal provisions of other laws.

A procedural question remains, however, for using the LUP as a tool for increased public participation, due to the fact that there have not as yet been any cases within Bulgaria utilizing this method. It therefore remains uncertain whether the LUP can be appealed by an NGO.

#### 4.3.1 Participation in LUP Discussions

It is possible to suggest to interested parties the idea of **taking part in public discussions about the LUP**, if such discussions are held. Such discussions are provided by the **Construction Law (CL)**. Previous experience illustrates that authorities prefer to avoid holding these public discussions, due most probably to the fact that there is no practice of sanctioning for not holding these discussions. Holding public discussions is not a requirement of the LUP procedure, so omitting such open dialogue is not considered legal ground for delaying the whole LUP.

In the other matters regarding permits, there is no available information about attempts of NGO or citizens to take part in the permitting process and to appeal permits. We therefore cannot make any guarantees to interested parties that taking part in the permitting process will be successful. Interested

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#### Case 4.6

*An example of “lobbying” to influence governmental decisionmaking in Bulgaria would be the success of a group of scientists which asked and succeeded to have a meeting with President Jeleu. During the meeting, the scientists presented their position against the construction of the nuclear power station near Belene.*

*What examples do you know?*

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parties should therefore measure the risks of such a method against potential benefits from other approaches. The expense of money and energy to take part in the permitting process with no real guarantees for success may not be the most worthwhile approach. Generally, the priority of the business sector is focused on obtaining the permit. Therefore, unless there is a special, particular interest on the part of business to involve the public involved in the permitting process (i.e. in order to get additional information), businesses are not likely to be supportive of involving the public in the permitting process since they are under no real obligation to do so. Interested parties must decide for themselves whether the likelihood of success is enough to invest the necessary time and energy in the process to challenge this position.

One suggestion would be to try to **focus on a single field of environmental protection** (for example the water use permits) and encourage interested parties (both businesses and NGOs) to seek information about the permitting process. This matter is regulated by **Articles 8, 9 and 10 of the Water Use Law**. Public Participation is not explicitly provided in the law, but interested parties can use the constitutional rule that all administrative decisions are appealable, unless the opposite is stated by the law. As nothing is stated in the Water Use Law, the legally correct conclusion would be that water use permits are appealable.

Interested parties can try to obtain information about the water use permits and the conditions under which authorities issued the different permits. For doing this, **interested parties must know which authorities issue which types of permits** (see Box 4.2, right).

#### 4.3.2 Cancellation of Permits

Another possibility for interested parties is to try to **obtain a cancellation of a water use permit** in case the conditions of the permit are not regarded. **Article 9 of the Water Use Law (WUL)** provides that the permit is cancelled if the person to which it is given does not comply with the conditions under which it was issued. Interested parties must have some proof (i.e. documentation or witnesses) about the violation of the permit. With such proof, interested parties can:

- **ask the authority to cancel the permit** and, according to the Law on the Administrative Procedure;
- **ask the court to issue the abolishing administrative act**, if the administration does not issue the act itself.

In other environmental fields, the procedure has less legal guarantees for public participation than those procedures for merely asking for information.

#### Box 4.2

##### Who Issues Permits?

- Permits for drinking water and hot mineral water?  
*The local administration and the MoH.*
- Permits for drinking mineral water?  
*The MoH.*
- Permits for deep ground water?  
*The MoI.*
- Permits for all other types of water?  
*The National Water Council.*



# **Module 5:**

## **Public Participation in Local Governmental Decisionmaking**



## **Module 5: Public Participation in Local Decisionmaking Processes**

### **PURPOSE**

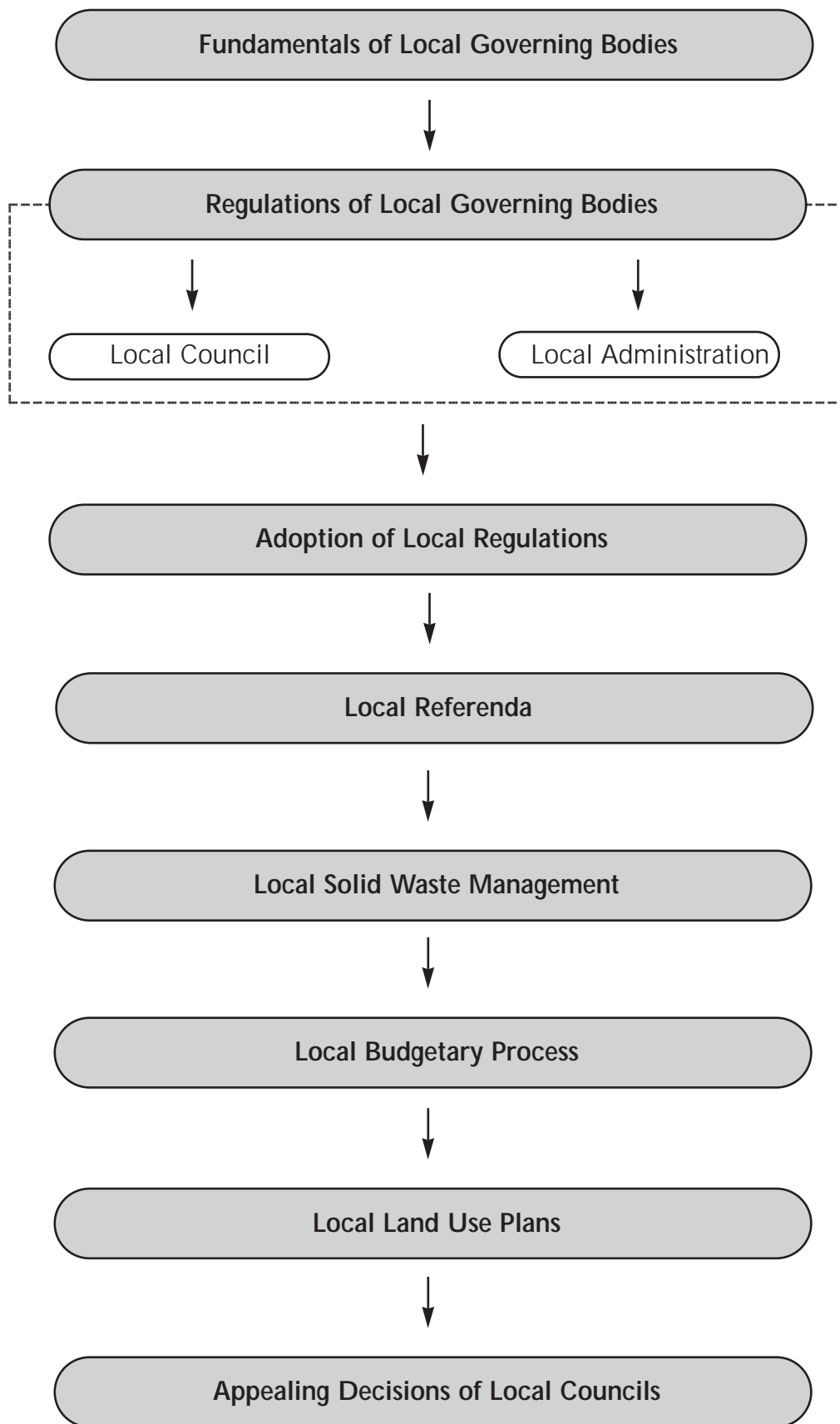
The purpose of Module 5 is to introduce participants to options and possibilities for public participation in the environmental decisionmaking processes at the local/municipal level in Bulgaria. The module examines the fundamental powers of individuals and institutions at the local level responsible for making decisions of particular importance to environmental issues, and proposes a variety of opportunities for the public to gain information about and access to them.

### **Objectives**

At the end of this module training, participants should have an understanding of, and the skills necessary to apply, the following information to their own public participation strategy:

- the regulations governing the activities of Local Councils, Commissions and Local Administration;
- the process for creating Commissions of Local Councils;
- the processes for adopting local regulations;
- the process for holding municipal local referenda;
- the process for enacting the local budget;
- the process for enacting the general version of the Local Land-Use and other plans;
- opportunities for appealing decisions of the Local Council.

## Contents: Public Participation in Local Decisionmaking Processes



## Introduction

It is important to keep in mind that involving the public in environmental actions at the local level is not an isolated activity. This should be a mutual endeavor, involving the efforts of both sides, the community and the public. In democratic society, public participation, especially at the community level is a tool to influence, monitor and improve local governmental actions and decisions.

There are a number of different methods used in public involvement and public participation at the local level. These methods are tools of moving toward a process of inclusion and involvement. They should not be looked upon as a political “weapon” by the public against the local government. Instead, the tools and methods introduced in this module should be looked upon as opportunities for cooperation and collaboration among different parties and sectors of society toward a common goal, that is, to save and improve the environmental conditions in the community.

## OVERVIEW OF FUNDAMENTAL POWERS OF THE LOCAL COUNCIL

Local Councils are given fundamental powers by the Local Government and Local Administration Law (LGLAL), published in **State Journal No. 77/91** and amended in **SG Nos. 24/95; 49/95** and **65/95**. This act provides Local Councils with the opportunities to:

- *enact internal regulations* on activities of the Local Council, on activities of Commissions, and on activities of the Local Administration;
- *create Commissions of the Local Council* and elect their members;
- *adopt local regulations* on local issues;

Of specific importance are the local regulations on:

- the environmental protection and the rational use of natural resources of local importance;
  - the conditions for the activity of legal and physical persons on the territory the region, when these conditions are defined by the ecological peculiarities of the region.
- *decide whether a local referendum will be held* on an issue, that concerns the region;
  - *resolve problems* linked with the treatment of solid waste;
  - *enact the local budget* (including the budget for environmental issues);
  - *enact the general version of the Local Land-use Plan*;
  - *enact other Local Development Plans*.

These powers alone provide quite important tools for influencing local environmental policy as well as the permitting process. Those interested in public participation at the local level must therefore be aware of and understand the areas where Local Councils have decisionmaking power or the ability to regulate different matters.

### Box 5.1

#### Opportunities for Participation in Decisionmaking Process of the Local Councils

Announcement of upcoming decisions (at discretion of Council)



Asking for Environmental Information (EPL) and LC Regulations allow for access to information



Participation in Commissions and Council meetings



Participation through experts appointed to Commissions



LC announces decisions to public and gives to Regional Governor within seven days



Challenging of decisions: appeal to regional governor to determine legality with non-formal methods (petition, actions, etc)



Post Decision Analysis (another opportunity to challenge decision)

## 5.1 REGULATION OF ACTIVITIES OF LOCAL COUNCILS, COMMISSIONS, AND LOCAL ADMINISTRATION

### 5.1.1 Regulation of the Activities of the Local Council

The internal regulation on activities of Local Councils governs the activities of the Local Council. The public should know that the LGLAL provides both the Local Councillor with certain powers to obtain information and for interested parties to obtain information from the Local Councillor. This can help the public to better know the facts of certain cases, and to examine the work of Local Councillors.

Of great significance and relevance in this respect are the texts of **Article 33, Line 2**, and **Article 36, Page 2** of the LGLAL:

- **Article 33, Line 2:** “The state authorities, the economic organizations and organizations of the public must help the Local Councillor in his work and should submit to him the documents and data required in connection with the Councillor’s tasks, except in instances when the requested data or documents are declared state or official secrets under the law.”
- **Article 36, Page 2:** “The Local Councillor should: 1. *(the first part of the text is not relevant here, and is therefore omitted)* 2. Maintain contact with the electorate and inform the people of the activities and decisions of the Local Council.”

It is clear that interested parties should maintain as much contact as possible with Local Councillors, and, whenever possible, try to use their prerogatives to gain access and information to the decisionmaking process.

For example, interested parties may:

- **ask local candidates** before, during, as well as after an election campaign to answer the question whether they will include rights of access to information and participation in the procedures of the activities of the Local Council;
- **submit a petition** to the Local Council for including such “procedural rights” in the Regulations of the Activities of the Local Council, even before the first session of the Local Council. This can be done with a parallel “lobbying” of some local councillors (using the media and other platforms) during the election and after the election period to assure the public’s demands for inclusion of public participation clauses in the Regulations of the Activities of the Local Council are met.

## Box 5.2

### Sample Questions for Local Councillors

1. Are there any criteria for defining the specific issues when the public would not be allowed to attend the sessions of the Local Council? The general rule provided in the law is that sessions of Local Councils are open. Local Councils can restrict and declare only some sessions closed.
2. How long before a Local Council session is the session agenda to be announced? Will the agendas for sessions addressing environmental issues be announced a minimum of two weeks to a month before a session?
3. Shall every issue have a reporter, who's duty it is to prepare a more detailed report on the matters discussed?
4. Will the public know the name of the reporter on the environmental issues that are going to be discussed in two weeks to a month prior to the session? Will the public be allowed to examine the report before the session?
5. Will the reporter be obligated to include citizens' opinions in the report and to provide explanation and answers to their questions?
6. Will the public, through a selected number of representatives, be allowed to take part in the discussions during the Council sessions? What are the conditions for such representation (i.e. only representatives of NGOs with more than 50 members, or signed petition of 30 or more citizens)?
7. Will the Council request extended public participation (i.e. beyond that prescribed in legal standards) on certain issues (such as in the enactment of the local budget, elaboration of the detailed land-use plans, etc.)? How will such participation be structured (i.e. through public hearings, interactive exhibitions, etc.)? Will there be time allocations? Who will be responsible for convening these public foras - Local Administration, Commissions of the Council, or the Council itself?
8. What are the Local Council's requirements for information requested by the public in **Article 27/5** of the LGLAL? What will be the procedure for providing such information to the public about decisions made? Will there be any specific forum for Local Council communication with their community?
9. Will the public have the right of access to the documentation generated by the Local Council during the decisionmaking process? Will it be possible for the public to ask the Local Council for copies of documents created in connection with the decision making process only at the price of the copying?
10. What will be the terms of these conditions? Will the Local Council agree that the violation of these regulations will serve as grounds for abolishing the decisions of the Local Council?

Interested parties can **lobby for the adoption of more “democratic” rules of work of the local powers**, i.e. openness of the procedure, having copies of protocols of discussions, having copies of preparatory documents, etc. The regulations on the Activity of the Commissions and the Local Administration can provide the same, or similar rules as those mentioned above in the Regulation on the Activity of the Local Council.

### *5.1.2 Regulation of the Activities of the Commissions of the Local Council*

It is important to note that the Commissions of the Local Council are responsible for preparing decisions. The regulations of these Commissions can and should include the rights of citizen participation in their activities. The regulations can, for instance, provide for the following:

- the right to learn about the Commission’s sessions at least several days before they occur;
- the right to have copies of the Commissions preparatory documents;
- the right to participate in the Commission’s sessions, including the right to submit proposals and to ask questions;
- the right to bring into the hall, where Commissions work, a limited number (three to five) outside specialists who can help the public defending its positions.

The right of access to the Commission’s documents is included under the right of information to the Local Council’s documentation. The Commissions are considered preparatory bodies which work more informally than the Council. It is therefore in the best interest of interested parties not to encumber the Commission’s activities with many procedural rights, as is more appropriate for the activities of the Local Council.

### *5.1.3 Regulation of the Activity of the Local Administration*

As far as the Regulation on the Activity of the Local Administration is concerned, there should be more rules included about the types of information that should be given to the public and the quickness of the procedure.

The Local Council can adopt rules for:

- **creating different departments for submitting information**, with individual officials, responsible for giving the concrete information;
- **sanctions for officials** who have not given the public the asked information;

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#### **Case 5.1**

*In the town of Rousse, one of the ‘hot spots’ on the Bulgarian ecological map, an announcement of the agenda for a Local Council session is made in the local newspaper one week before the session.*

*In the town of Botevgrad, the decisions of the Local Council are announced at a special place in the lobby of the Local Council building, the same building houses the offices of the Local Administration.*

*What examples do you know?*

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- in cases where the Local Administration prepares long-term decisions for the Local Council or for another state agency (for instance the local budget or the report on the state of the environment) **increased public participation provisions** can be mandated beyond the scope of those legally provided in order to make reports or proposals of the mayor more representative and more publicly accountable.

In general the Local Administration is supposed to realize decisions of the Local Council, so there should not be many additional rules concerning public participation in the decisionmaking process.

The Local Administration may also create special departments or units to assure that public participation rights are exercised unhindered, including the right of information and the right of submitting inquiries or requests. One concrete suggestion is the creation of a Department of Information and a separate Department of Public Relations.

## 5.2 CREATION OF THE COMMISSIONS OF THE LOCAL COUNCIL AND ELECTION OF MEMBERS

### 5.2.1 Creation of Commissions

Commissions of the Local Council are intended to serve as administrators of Local Council activities. The public should therefore be concerned in instances where the Local Council does not know how or does not want to create appropriate Commissions. Interested parties should be **proactive in monitoring and conducting assessments of future Council decisionmaking processes** in order to suggest the creation of appropriate Commissions when important local problems are not covered in the activities of already existing Commissions.

One possible suggestion for the Local Council would be for the **creation of a Commission for Public Participation and Complaints** which would serve the role as the “Local Ombudsman” to deal with major criticisms of or inquires about the activities of the Local Administration.

### 5.2.2 Election of Commission Members

**Article 48** of the Local Government and Local Administration Law provides explicitly for the possibility of including specialists that are not members of the Local Council in the work of Commissions. This provision provides a significant opportunity for interest groups to **lobby for the inclusion of representatives in the work of Commissions**. Interested parties can nominate delegates separately or jointly (and thus have a much greater change of success) and lobby (both publicly and through informal means) Local Councillors to include their recommended specialists on Commissions. Lobbying

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### Case 5.2

*In the community of Troyan, local regulation on environmental protection provides some rules concerning the activity of the Local Administration. The Local Administration defines the data, concerning the environment that will be collected from industry (for example, the water, since there is a water crisis in Troyan and the lack of water is perceived as a “local ecological peculiarity”). The Local Administration has the right to impose sanctions on persons who do not submit the needed and requested data. While this is a right of the Local Administration, it is also an additional duty. Interested persons may therefore also ask information about the number of information submittals from industry as well as for the number of sanctions for those not obeying the local regulation.*

*In Sliven, Varna and Botevgrad, the Local Councils adopted rules for the creation of local “eco-inspections.” Acting as environmental policemen, local “eco-inspectors” have rights to impose sanctions for minor violations and to document larger violations of regulations (both central and local) for environmental protection.*

*What examples do you know?*

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activities can also be a useful tool to encourage Councillors to remove certain delegates or to push for the inclusion of those supportive local Councillors who may not have been initially considered.

### 5.2.3 Work of the Commissions

As was seen in previous sections, the rules for the work of Commissions may contain very specific rules for communicating with the local community or with specific interest groups. As regards the general work of Commissions, interested parties should **carefully examine the specific assignments of given Commissions**. This research is very important, since some issues or problems may fall within the work of several Commissions or may not be initially indicated in a given name of a Commission (see example, Box 5.3).

#### Box 5.3

##### What's in a Name?

"Commission on the Control of the Quality and Quantity of Plovdiv's Water" may be a more appropriate name than "Commission for Resolving the Plovdiv Water Problem," since a future polluter might refuse to deal with the latter-named Commission on the pretext that it should deal only with the water deficit in the city of Plovdiv, and not with the pollution created by his industry.

### 5.3 ADOPTION OF LOCAL REGULATIONS

Local Councils are given the fundamental powers to adopt local regulations on local issues of a specific importance, including local regulations on:

- the *environmental protection and the rational use of natural resources* of local importance;
- the *conditions for the activity of legal and physical persons* on the territory the region, when these conditions are defined by the ecological peculiarities of the region.

This is a matter that is not yet well developed and used by the NGOs. In Bulgarian legislation, there is not a clear delineation between matters regulated on a national level and matters regulated on a local level. However, the dispositions of **Article 11, Point 8** of the LGLAL and **Article 21, Page 13** of the LGLAL provide Local Councils with the power to regulate the matters already mentioned.

It is also clear that local regulations on these matters can not contradict the national law. However, on some matters, legislation has not yet been adopted by the Parliament, including the collection and submission of environmental information to citizens. Local Councils may **create regulations for collecting and submitting environmental information** when connected with the issues mentioned

#### Case 5.3

*After a torrential flood in the community of Svogve in Southern Bulgaria, the Local Council created a Commission for coping with the consequences of the flood. The Commission was "ad hoc" and consisted of both Local Councillors and ordinary citizens.*

*In Rousse, an Environmental Council was formed from 1989-1990 to the local community government. The Council consisted of both experts and general public members, including well-known experts and professionals in the field of environment, engineering, architecture and health care, as well as eminent citizens known by the public for their active role in environmental issues, including writers, artists, etc. At the time of the creation of this Council, there were no political criteria or motives for choosing the members. The Council's role was intended to stimulate public discussion on "hot" environmental problems of the town and to discuss opinions, decisions, etc. During the subsequent years after 1992, the flavor of the Council changed dramatically. The Council became more closely affiliated with the working structure of the local municipality; experts prevailed in discussions and recommendations. However, it was announced that public representatives are allowed to participate at any time, and the level of participation of the public is determined by their own willingness and interest to participate.*

*What examples do you know?*

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above: in cities with polluted air, for instance, access to information about air emissions and air control (e.g. Rousse, Dimitrovgrad, Svishtov, Silistra) or in cities with water problems, access to information regarding the use and pollution of local water resources (e.g. Lovetch, Troian, Vratza)

**Article 21, Page 13** of the LGLAL indicates the principle that in order for a Local Council to adopt local regulations, there should be 'local ecological, cultural, social and other peculiarities of the municipality,' that require such local regulation. When such local regulation is adopted, the problem naturally arises of whether the local regulation creates different conditions for economic activity for different persons (i.e. physical and legal). Therefore, the operating principle is that *local regulations must not create unequal conditions for economic activity of the economic subjects on the territory of the municipality*. Since any restriction by definition creates unequal conditions (even if only by comparison to the conditions existing in a neighboring municipality), we suggest the following approach for proceeding:

Subjects on the territory of the municipality can be obliged to do some activities that are not of an "economic" nature, like giving information or organizing the self-monitoring process, for example. There is minimal, if any, existing danger of saying that the Local Council has created unequal conditions for the economic activity of the different subjects on the territory of the municipality.

In the case of "economic" restrictions (local dispositions with economic significance) a possible idea can be to combine the restrictions on the economic activity with some financial incentives. At the moment, one such possibility is the **Local Ecofund**. The Ecofund's resources are spent per the decisions of a special Board, with the Mayor of the Municipality serving as President of the Board. In **Article 18, Line 1** of the Regulation on collecting, spending and controlling the national and local Ecofunds (**State Journal No. 5/19.I.1993**) states that the "priorities in the municipality's politics," as well as the "adopted criteria for giving money from the Ecofund" shall be the basis for the Board's decisions. Therefore, the Local Council can adopt such "priorities in the municipality's politics" and "criteria for giving money from the local Ecofund" that shall be obligatory for the Boards, and according to which the most ecologically sound activities can be stimulated financially with the Local Ecofund.

Under current legislation, the adoption of some kind of additional local taxation on an environmentally dangerous activity would be judged illegal. The Law on the Local Taxes provides the possibility for the Local Council to vote local taxes only in the cases provided

#### Box 5.4

##### **Examples of Local Regulations for the Protection of the Environment**

###### **1. Local regulation in**

**Troyan:** *The local problem was a general lack of water, and poor quality of drinking water. Special rules beyond those existing in other regulations were adopted (e.g. a sanction against those who break the water counter of an industrial facility).*

###### **2. Local regulation in**

**Botevgrad:** *The local problem was the noise from restaurants and bars in the central part of the city. Restrictions were adopted for the existing facilities, along with sanctions for teasing of animals (although not specifically an ecological problem, it provides a model).*

###### **3. Decision of the Local Council in the northern Bulgarian city of Vidin (at the border with**

**Roumania):** *The Local Council adopted a local tax, called an "ecological tax." Under the tax, any car or truck leaving Bulgaria was required to pay a tax of 3USD "for the improvement of the environment." Although the tax was called "ecological," the procedure is technically not legal under the authority of the Local Council, since it is not given the power to adopt such rules concerning the taxation of departing vehicles. After the tax was adopted, the Vidin Local Council and Local Administration lost control over the way the tax was collected and expenditure of revenues.*

by the law, and only within the amounts provided explicitly by the law. Therefore, taxation that steps out of the provided legal frame would be judged illegal.

### 5.3.1 Regulation on Local Access to Information

Provisions may be put in the local access to information regulations regarding the following:

1. *Regulation on the submission of information from industries to the local administration and the public in the municipality, for instance:* quality of consumed water per month, per year; number and type of water sources (i.e. how many of them belong only to the person and how many sources are linked to the central water supply network); water consumption permits; water discharge permits; the location points of where water is discharged; and any documentation about the discharge of water.
2. *Special obligations that aim to assure the effectiveness of the access to information regulation, for instance:* the obligation of every facility owner to appoint an official within the facility who will be responsible for collecting and submitting to the Local Administration the data requested or required under the law; the obligation of officials or workers within the facility to submit the mentioned data by a given deadline.
3. *See also potential provisions for local access to information* through the Local Administration, Local Councillors (who must obtain information if requested) and through the work of the Commissions of the Local Councils.

### 5.3.2 Regulation on Activities of Legal or Physical Persons in a Municipality

The conditions for the activity of legal or physical persons on the territory of a region, when these conditions are defined by the ecological peculiarities of the region, can be regulated in the same way, keeping in mind the same eventual difficulties: the question whether the regulation is not contrary to the law, and the assessment of what are the ecological peculiarities of the region.

The definitions of **Article 11, Page 8** and **Article 21, Page 13** of LGLAL coincide, so the motives for voting a regulation, based on **Article 21, Page 13** of LGLAL can also serve **Article 11, Page 8** of the same law.

The only available example to illustrate what can be regulated through **Article 21, Page 13**, is that of the case of the problem of the deficiency of local water. In this case it is possible to:

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#### Case 5.4

*Such regulations were adopted in Troyan and in Botevgrad. The main difficulty, however, the application of these regulations, since the Local Administration is generally not inclined to enter into conflict with industry for the sake of citizen interests. For this reason it is important to exert pressure on the Local Administration to implement a local regulation once it is adopted.*

*What examples do you know?*

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1. **adopt specific norms**, linked with the consumption of water, providing higher prices for water consumption beyond a certain limit;
2. **impose stricter controls** on water consumption, and organize this control on the controlled person's expenses;
3. see what was suggested in earlier sections in connection with the **access to information** linked with the consumption of water.

### 5.3.3 Regulation on Protected Areas

If a protected area is situated near or within a municipality, the Local Council can adopt provisions aimed at preserving the conservation area. For example, if the region includes a wet zone, where many important and rare species live, and even if the conservation area has its own system of economic activities, the Local Council can adopt regulations on its own initiative. The Local Council may provide some restrictions in the economic zone either outside or on the border of the protected zone: restrictions on the use of certain pesticides; or restriction for cutting the grass in a given period; or obligations of the farmers to keep documentation on the output and use of synthetic fertilizers and pesticides; or obligations of the farmers to use natural fertilizers. With very strong attention to European standards for each of these issues, the Local Council can adopt provisions regarding the number of cattle or other domestic animals that can be kept in a prescribed area.

## 5.4 DECISIONS WHETHER MUNICIPAL LOCAL REFERENDA WILL BE HELD ON AN ISSUE

Under **Article 21, Page 20** of the LGLAL, the Local Council can make the decision to hold a local referendum on an issue that concerns the municipality. Three major questions concern the local referendum:

1. What type of issues may be decided by referendum?
2. How should the decision be made?; and
3. Who will pay for organizing the referendum?

### 5.4.1 What type of issues may be decided by referendum?

The most difficult question to answer is the first question. **Article 17/2** of the LGLAL states that local referendum can be held on questions connected to the municipality's policies. In **Article 11, Page 8** of LGLAL is a reference to this issue, including provisions for the local government authorities to make decisions on environmental issues and

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### Case 5.5

*There is no practice in Bulgaria of the use of local referenda except for two reported cases in the city of Svishtov and in the town of Nedelino, the region of Plovdiv. The only information available regards a referendum made on the construction of the Nuclear Plant near Belene which was declared null by the Court in Svishtov on the basis that it was not a question of local, but of national importance.*

*What examples do you know?*

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on issues connected with the rational use of natural resources of local importance.

For interested persons, therefore, there remains a great deal of work to create the definition of the issues that will be decided on by referendum.

The suggestion for future local referenda would be to **define very clearly the question that will be decided by the referenda**. The question must be asked in a manner that makes it clear that it is a local issue that is being addressed, not one of national importance. For example, if the construction of a chemical plant endangers the flora and fauna of a given region, the local referendum can be held on the issue of designating the area a conservation zone with rules for economic activity that would exclude the construction of a chemical plant. The referendum will illustrate to the Minister of Environment (who has the right to designate conservation areas), without a doubt, that the issue is of local importance through a clear majority of the people living in the region.

In other cases it is possible that the referendum indicates not a proposal, but a decision as in the case cited above. Such a decision can be on the question, for example, of whether a solid waste treatment plant can be constructed on the territory of the municipality.

#### *5.4.2 How should the decision be made to hold a referendum?*

The decision for having a local referendum is made by the Local Council, and **Article 17/2** of the LGLAL requires a majority of more than half the Local Councillors. Because of the specificity in defining the question for the local referendum, and of the fact that in the Local Council there are often people with opposing ideas, it is good if interested persons **prepare all questions and begin lobbying Local Councillors on those documents already prepared for the local referendum**. In this case, the risk of error in the definition of the referendum question will be limited and assure the future success of the action.

#### *5.4.3 Who shall pay for organizing the referendum?*

**Article 17/4** of the LGLAL states that local referenda shall be financed from the local budget. This issue is determined by a decision of the Local Council. Interested persons should be aware of this, otherwise the decision for holding local referendum may remain at the decision stage with no practical results.

#### **Box 5.5**

##### **Important issues to remember in organizing referenda:**

- The national legislation must be consulted when referenda are organized and interested parties must find the exact text that provides the power to the local government to issue a decision on a given matter.
- The referendum question must be asked in such a way that people are able to answer simply "yes" or "no."

## 5.5 RESOLUTION OF PROBLEMS LINKED WITH SOLID WASTE TREATMENT

Solid waste is by far the most common environmental protection problem. In Bulgaria, the collection, transport and treatment of solid waste is done by communal, local, enterprises created many years ago prior to the political changes in the country. The primary difficulty in approaching solid waste problems is to introduce practical legal mechanisms to minimize the production of solid waste and to regulate the system of transporting and depositing of the solid waste.

The major economic instrument to provide an incentive for people to “produce” less garbage are the mechanisms provided in **Articles 63-66 of the Local Taxes Law (LTL)**. Local Councils are given the power to collect taxes calculated on the basis of the quantity of garbage and the money spent for the service of collecting, transporting and storing the garbage. There are very good opportunities for interested persons to look into the calculation scheme of the garbage collecting activity and for controlling the effectiveness of the process. This requires work from a financial expert, but once the situation is known, interested parties can submit suggestions for the improvement.

Interested parties can propose options for improvements to the Local Council in the following ways:

- *introducing competition* for collecting garbage. Competition may help the Local Administration identify the best contract from both a financial and public participation point of view;
- *announcing in the media* the conditions of the confirmed contract;
- including in the contract a clause under which a *mixed body (included interested parties from the public)* will assess the quality of all or some of the results;
- introducing an *incentive to collect organic and the non-organic garbage separately* (e.g. local tax reduction);
- the Local Council can decide to *create a special “compost field” where the organic garbage can be kept* and/or create a local organization to sell the compost.

All these improvements in the collection and treatment of solid waste can be adopted as decisions of the Local Council. Interested parties should decide whether it is wise first to lobby Commissions and then the Local Council, or first to lobby Local Councillors and create a Commission for resolving one of the mentioned problems.

## 5.6 ENACTMENT OF THE LOCAL BUDGET

According to **Article 21, Page 6** of the LGLAL, the enactment of the local budget is the prerogative of the Local Council. The Local Council has the power to enact, control and finally to approve the report of expenditures of the budget. **Article 56/1** of the LGLAL states that the budget is prepared by the Mayor of the municipality, who submits it to the Local Council. If the Mayor of the municipality creates a Commission for the preparation of the budget, interested persons can **attend the sessions of this Commission**. In all cases, interested persons can **ask for information about how the budget is prepared, and when and where the sessions of the Commission that prepares the budget will be held**. Very useful information can be provided during the process of discussing and voting on the local budget.

The primary inconvenience in the budget process is that the local budget is related to the national budget and in previous years the adoption of the national budget was voted on late in the year. Also, from a practical point of view, it is good to know that very few municipalities in the country can enact their budget relying only on local budget resources. The majority of municipalities are financed through the national budget. This should not discourage interested parties from seeking information about the local budget; it is very important for the public to be informed for this process.

Information about how the Local Administrations' budgetary process can be requested according to the general rules regarding the right of information as stated in **Article 41** of the Constitution. There is also the explicit rule under **Article 58** of LGLAL, which states: "The local budget is accessible for the public and the public controls the local budget."

There should be no problem for a citizen to request information regarding the local budget in his/her community. Information about the local budget should be asked directly from the Mayor of the municipality (if it is an inquiry regarding the municipality) or from the Mayor of the town or village if the inquiry directly concerns the budget of this smaller area. As discussed earlier, the Regulation on the Activity of the Local Administration provides for the creation of a special department for information.

## 5.7 ENACTMENT OF THE GENERAL VERSION OF LOCAL LAND-USE PLAN

According to the Building Law, the Local Council adopts the Local Land Use Plan. The Local Land Use Plan (LLUP) regulates the way of using the land within the city limits. The general version of the LLUP



outlines the way the city shall be constructed and developed. Different parts of the city have different types of designation, i.e. industrial areas, green areas, areas for residential or industrial development and construction.

The Building Law includes provisions for a procedure called “public assessment” within the LLUP. However, in the Building Law there is not any legal guarantee to assure that the procedure will be followed. The “public assessment” procedure does not provide additional legal resources for obtaining information. A violation of the procedures for “public assessment” does not serve as cause for abolishing the LLUP.

Interested parties should **require information about the LLUP and try to take part early on the stage of preparation of the LLUP.**

The LLUP is a project for which the EPL prescribes an EIA. Therefore, all that is described herein relating to public participation in the EIA process is also in force and can be used in connection with the LLUP.

**Consultation with a specialist is needed** so that the interested party knows whether the LLUP violates the legal provisions (for instance, regarding the possible height of construction, or regarding the permissible distances between industrial facilities and residential areas). If such legal provisions are violated, then the LLUP can be abolished for the parts found to be illegal.

## **5.8 ANNOUNCING AND APPEALING DECISIONS OF THE LOCAL COUNCIL**

The decisions of the Local Council are public, and according to **Article 27** of LGLAL, the Local Council must announce them to the public. Normally, the decisions of the Local Council are announced in the hall of the building where the Council and the Local Administration have their offices. If the Local Council does not post this information, the interested parties can **remind the Council of its obligation under the LGLAL and request it to post information.** Any decision of the Council which does not follow the procedure in the law for announcement would be considered under the law to be invalid. In the case that a Local Administration attempts to apply such an undisclosed decision, interested parties may object through action in the court.

Decisions of the Local Council are of two types:

- individual, and
- regulatory (called “regulations” in **Article 22** of the LGLAL).

Both decisions are accessible to the public and should be announced. However, the regulations must be sent to the Regional Governor in a seven days period of the date of their adoption. If the Regional

Governor finds the regulations of the Local Council illegal (i.e. contrary to the law) s/he can stop their application and bring the regulation to the Regional Court. Under **Article 72** of the LGLAL, the Regional Court can judge whether the regulation is illegal or not.

Interested parties should concern themselves both with cases when local regulations mitigate and reinforce environmental protection measures. In the first instance, when local regulations mitigate environmental protection measures, interested parties can **submit a written opinion to the Regional Governor with a demand to bring the Regulation in the Regional Court**. In the written opinion, interested parties should illustrate to the Governor the points where the local regulation violates the law. If the Governor decides and brings the local regulation to court, then the interested parties can ask the Regional Court to give them the status of a party in the procedure. There is not yet jurisprudence on this issue, but it is very important for interested parties to apply for such status all the same.

In the second instance, when the local regulation reinforces the environmental protection measures, interested parties do not have an invested interest in abolishing the regulation. Regulations more severe than the law are certainly more favorable for the local environment. In this case, initiative for abolishing the local regulation would originate from some other interest. However, in this case interested parties may also **ask to have the status of a party in the procedure**. The demand for such status should be submitted to the Regional Court along with documents that prove the involvement of the interested party in the protection of the environment.

## 5.9 THE LOCAL ADMINISTRATION

The role of the Local Administration is to organize and implement decisions of the Local Council and to exercise some functions that have been designated by the law or by decisions of the central authorities. At the head of the Local Administration is the Mayor, who is elected with a direct vote by the voters in the municipality or in the city.

Whenever the Local Administration is to implement a decision of the Local Council, or of the central government, interested parties can use legal and nonformal tools for influencing the process to further environmental concerns.

In the first case, the Mayor is requested to bring about a decision of the Local Council. Such decisions can sometimes be in contradiction with the public's wishes and expectations. The Local Council's decision can contradict either the law or the "community's interests." In such cases, interested parties may **appeal to the Mayor to use the**

**tool provided by Article 45, Line 2** of the LGLAL:

“The Mayor can object to a decision of the Local Council, when s/he thinks that the decision contradicts the law or that the decision contradicts the interests of the community.”

In case the Mayor objects to the Local Council’s decision, the Council must make a new decision on the same issue, but the decision requires a majority of more than half of all Local Councillors. Interested parties should therefore **lobby the Mayor to utilize the tool provided by Article 45/2** of LGLAL.

When the Mayor implements decisions of the central government or executes regulations prescribed in the law, interested parties can **appeal the Mayor’s decisions** according to the general principle, that all administrative acts are appealable.

Besides the cases where the Mayor issues administrative acts that concern public interest, and therefore can be appealed, the Mayor can issue an act where the public’s interest is involved, and which acts prepare decisions, which are important for the environment.

#### **Box 5.6**

The following are examples of administrative acts issued by the Mayor that can be appealed by the interested parties:

- the act for approving a change in the detailed construction plan and in the silhouette plan, which are detailed versions of the General Use Plan. This act is appealable by the person who can prove legal interest for starting the procedure. There is not yet jurisprudence on the issue of whether an association for the protection of the environment can appeal a Mayor’s order for approving a change in the detailed construction plan and in the detailed silhouette plan (it can be an association for the protection of the architectural heritage).

The question remains that the law recognizes the right of a physical person living in the area where the General Use Plan happens to appeal, but does not explicitly recognize the right of a group of citizens (who may not live next to the area in question as required under the law) to appeal. This has direct impact on the ability of those who have created an NGO to protect that area to appeal the process.

- the construction permit. The construction permit is issued on the basis of an already approved and existing general land use plan, and the detailed construction plan, silhouette plan, etc. The Building Law contains detailed provisions, but the main issue is that the construction permit must not contradict the general and the detailed plans. Any construction permit that is given in contradiction to the provisions of the general plan and the other detailed plans can be appealed in court and annulled.

# **Module 6:**

## **Public Participation in Business Decisionmaking**



## **Module 6: Public Participation in Business Decisionmaking**

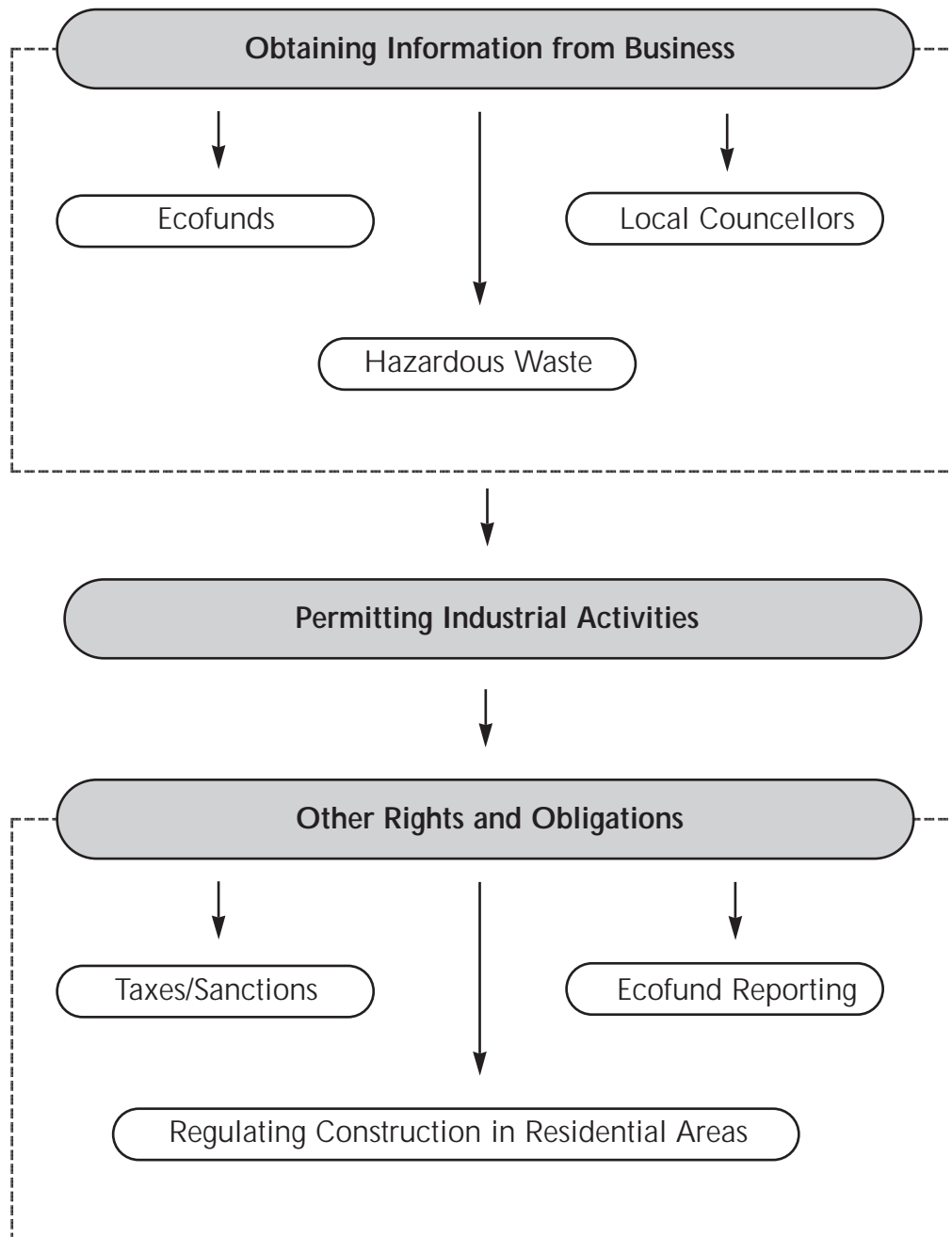
### **PURPOSE**

The purpose of Module 6 is to introduce participants to options and possibilities for the public to influence the decisionmaking processes of businesses and industry which have an impact on the environment. The module examines a variety of options for the public to gain information about business activities, and the rights and obligations of business to provide information on its activities.

### **OBJECTIVES**

At the end of this module training, participants should have an understanding of the following possibilities for public participation in the decisionmaking processes of business and how to apply them to their own public participation strategy:

- options for obtaining information from business;
- permitting processes of industrial activities;
- other rights and obligations of business.



## Introduction:

The business and industry sector in Bulgaria, whether state or privately owned, plays a critical role in the environmental decisionmaking process. The economic, political, social and environmental impact of industry is widely felt and tremendously influential. There is no doubt that whether as citizen or as developer, the role of industry and business in environmental decisionmaking processes is central.

It is important to recognize that the business sector is an integral part of “the public,” and in the case of rights, the Bulgarian business as a community of persons has no more prerogatives or rights than do other Bulgarian citizens. For example, the right of information is the same for the average citizen as for the businessman, or for the manager of an important commercial firm. The business as an institution, however, has some additional rights that other citizens do not have simply because citizens do not need them - for example, the right to keep trade secrets - which has some implications on the general public's right to information.

***“... the business sector is an integral part of ‘the public’ and in the case of rights, the Bulgarian business as a community of persons has no more prerogatives or rights than do other Bulgarian citizens. ... “***

In addition, the business also has some additional obligations which are imposed on it for the public security. This matter is of enormous importance to environmental protection and is the central issue of importance in this module. The module addresses the issue of public participation in business decision-making at three levels:

- obtaining information from industry;
- permitting industrial activities;
- other rights and obligations of business.

## 6.1 OBTAINING INFORMATION FROM INDUSTRY

The issue of obtaining information from industry in Bulgaria is relatively new and has been regulated for the first time only since 1991 with the adoption of the new Constitution. New text was adopted within the Constitution which proclaims the right of each citizen to obtain information from state authorities and from private persons, with the exception of those instances in which state secrets and rights of other persons are not concerned. At this point there is little clarity among state authorities regarding the meaning of the expression “rights of other persons.” However, two legal texts referring to **Article 41** of the Constitution provide some guidance on the matter. First, **Article 52** of the Commercial Code stipulates the obligation for employees to keep “the trade secret of persons who have mandated them with a task.” Second, **Article 14** of the Law against unfair competition gives a broad definition of the term “producer’s and trade secret.” Article 14 states that unfair competition is also the “learning, using and publishing the producer’s or trade secret of another person.” These are important texts for NGOs and the public, since businesses may refuse to provide information about their activities based on these stipulations.

### *6.1.1 Provisions for Access to Information*

Up to now, the rights for access to information are hindered to a certain extent due to the fact that there is currently no special procedure for obtaining information about business activity. However, it is good for interested parties to **know the different provisions regulating these rights of information.**

**Articles 8-14** of the EPL are the main provisions for the right of information. The provisions of Articles 14, 13 and 13a of the EPL are of particular importance to business;

- *Article 14* states that the producers and the sellers of goods and services are obliged to give information to consumers about the possible negative effects of their goods and services. The information must be given in written form and when the effects are not important the information can be given verbally. There are not yet reported cases when the right of the citizen of information was used against a producer or seller.
- *Articles 13 and 13a* require that business give information in cases of possible or already existing pollution or damages to the environment. These texts may be used by the authorities and by business, but there are no reported cases for sanctioning businesses for not giving information under Articles 13 and 13a.



According to **Article 32** of the EPL, in all cases of violations of the regulations of the EPL, including those in Articles 13, 13a and 14, **a violator can be fined up to 300,000 leva**. This is the primary sanction for not complying with requirements for providing information. In addition, **a violator can be sued for damages** if the failure to provide information has led to damages for other persons. But in this case the damages and a causal link must be proven and established.

As the primary conditions for asking and providing information, Articles 8-14 of the EPL are a useful for interested parties in two ways. The business can act both as the party requesting as well as the party submitting information. As a member of the “public,” the role of business is therefore both as “seller” and “consumer” of information.

### *6.1.2 Obtaining Information on Hazardous Waste*

Also of particular importance to accessing information from businesses is the stipulation for the right to information addressed in the regulation on the hazardous waste -- **Regulation No. 153/6.VIII.1993** of the Council of Ministers. Regulation No. 153/6.VIII.1993 establishes the procedures for state control over hazardous waste. The two main ideas developed in the regulation are: permitting the importation, dealing and treatment of dangerous waste, and the declaration of dangerous waste on the territory of Bulgaria.

Interested parties -- both businesses and NGOs -- should know that **a lot can be learned about business activity through the utilization of Regulation No. 153**. It is possible, for example, that the tool for asking information about hazardous waste could be used by business for developing a strategy against a competitor. In the matter of environmental information concerning the hazardous waste, however, the interests of business and the public are often in opposition. However, communities and business need to learn to work together since, in the long run, such cooperation will be mutually beneficial for both parties -- for the viability of business activity and the environmental safety of a community.

**Article 10** of Regulation No. 153/6.VIII.1993 provides that the dangerous waste “producer” must declare the quantity and the type of the dangerous waste he “expects” to be produced over the next year. Copies of this declaration are given in the RIE and in the Local Administration. **Article 11** provides for submission of data for the previous year. For declaring false data, parties can be sued under the Penal Code, **Article 35** of Regulation No. 153. Business is therefore under obligation to provide data, but are encouraged to do so using both methods of sanctioning and encouragement:

### 6.1.3 Accessing Information Through EcoFunds

Authorities in Bulgaria do not only sanction businesses and collect money from them, but also provide money for helping environmentally safe projects. The main regulation for this matter is **Regulation No. 168/17.VIII.1995 for the Ecofunds**. One of the main difficulties with Ecofunds is the lack of information about the contracts concluded between the Ecofunds and the business. “Contracted” parties can therefore **use Article 8 of the EPL to request additional information**. On the other hand, the “contracted” parties are under obligation to provide information regarding the way they spend the funds, and about the results of their project (per paragraph 5 from the additional dispositions). In this case, the “contracted” party can not object to giving information on the basis of “trade secret.” Therefore, interested parties, both businesses and citizens, may **request to have information about the way the public resources are spent and about the results of the sponsored project**.

### 6.1.4 Access of Local Councillors to Information

It is worth repeating here, as discussed earlier in the module on participation in local governmental decisionmaking, that according to **Article 36, Line 2** of the LGLAL, Local Councillors have the right to ask and to have information from the authorities and from private businesses when this information is necessary for the Councillor’s work. Interested parties should therefore **try to access information through Local Councillors**.

## 6.2 PERMITTING INDUSTRIAL ACTIVITIES

The procedure for issuing the EIA Act has already been discussed in great detail, but there are also other permits that business must obtain to be able to act in accordance with the law. The most important permits related to the environment are identified in Box 6.1.

### 6.2.1 Permits for Water Use

Permits for water use are issued in two ways:

1. If the water is taken from the water supply within a city or a village, the permit is issued by the “Water and Canalization” Enterprise (WCE) and is regulated by **Regulation No. 9/14.IX.1994**.
2. If the water is taken from any other source, then the permit is issued under the Water Use Law - Article 8-10 - and the authority is different according to the different type of water.

#### Box 6.1

##### Additional Permits Required for Business Activity

- the permits for water use;
- the permits for water discharge;
- the permit for construction on agricultural land;
- the permit to change the usage of agricultural land;
- the permits for treating hazardous waste;
- the permits for importing, producing, treating hazardous materials.

### *6.2.2 Permits for Water Discharge*

There are also two methods for providing permits for water discharge:

1. If the polluted water is discharged in the canalization, the authority is the WCE.
2. If the water is discharged in any other water (i.e. river, lake or the sea), the permit is issued by the MoE according to **Article 12** of the Law for the Protection of the Air, of the Water and of the Soil from Pollution (LPAWSP).

### *6.2.3 Permits for Construction on Agricultural Land*

The permit for construction on agricultural land is needed when the character of the agricultural land does not change, but when the investor intends to build or construct on the land. The permit is issued under **Regulation No. 2 for Constructions in Agricultural Land** (State Journal No. 47/1993).

### *6.2.4 Permits for Changing the Character of Agricultural Land*

The permit to change the character of agricultural land is always required when the character of the agricultural land is altered, i.e. when an investor builds a construction on the land that is not directly linked with agriculture. The permit is issued by the Land Commission by the Council of Ministers and the matter is regulated by the **Law for the Protection of the Arable Land and the Pastures (LPALP)**.

There is also a Regulation for the application of LPALP.

### *6.2.5 Permits for Treating Hazardous Waste*

The permits for treating dangerous waste are issued under **Article 8 of Regulation No. 153/6.VIII.1993**. If the activity is smaller and within the territory of a single RIE, the permit is issued by the RIE. For greater activities, the permit is issued by the MoE.

### *6.2.6 Permits for Importing, Producing and Treating Hazardous Materials*

The permits for importing, producing, and treating hazardous materials are issued by the Ministry of Health and the Inspectorates of the MoH. The matter is regulated by the **Law on Public Health (LPH)** and the regulations for the application of the LPH. There are also some regulations issued for specifying the dispositions of the LPH. The most important of the permits of this kind is **Regulation No 27/17.VIII.1995**, the permit for the importation of goods, which is of significant importance for human health. The regulation contains a list of goods of significant importance for the human health.

## 6.3 OTHER RIGHTS AND OBLIGATIONS OF BUSINESS

Bulgarian legislation imposes some additional obligations on businesses that are also of importance here.

### 6.3.1 Taxes

One such obligation on business is the tax that businesses must pay for consumption of natural resources and pollution greater than that permissible under the permit or by law. This tax is referred to in Articles 3 and 3a of the EPL as a “sanction.” Rules for paying these sanctions are given in **Regulation No. 24/4.II.1993**. The principle of Regulation No. 24 is that if the authority measures the quantity of pollutants of a given industrial activity, and if the quantity is greater than an established median, the owner of the facility must pay the “excess of pollution.” There are formulas according to which the abnormal pollution is measured, and any unit of pollutants has a prescribed “price.” This regulation is also more commonly referred to as the “polluters pay” principle.

There are some problems with the “**polluters pay**” approach. First, due to the fact that the administration in Bulgaria is not as strong as the administration in more developed countries, there are not enough guarantees that the administration will apply the rule to all parties. Second, the administration in Bulgaria is not supplied with sophisticated enough tools for measuring the abnormal pollution. This is a second source of error in the appreciation of pollution. Third, sanctions are imposed in a given moment, but if an industry does not pay the sanction, there is no procedure for collecting accumulated interest on the sum. Legislators have argued that it is not possible to have “interest” on a sanction. There is a great deal of work for NGOs and businesses to correct these inconsistencies.

There is not yet a separate law for “paying taxes for the consumed resources.” For some resources the tax is defined in an already existing law (i.e. the tax for the extraction of sand, the tax for the use of water).

### 6.3.2 Regulations on Construction in Residential Areas

Another obligation for the business is to construct facilities at a minimum distance from residential areas. These rules are given in **Regulation No. 7/1992** of the Ministry of Construction. There is a long list for the different distances according to the different type of facility.

### 6.3.3 Obligations of Reporting Under Ecofunds

Although discussed to some degree above, it is also worth mentioning again the obligations prescribed in **Regulation No. 168/17.VIII.1995** for businesses that have received money from the Ecofunds to report data about the results of the supported activity and how the resources were spent.

# **Module 7:**

## **Public Participation in the EIA Process**



## **Module 7: Public Participation in the EIA Process**

### **PURPOSE**

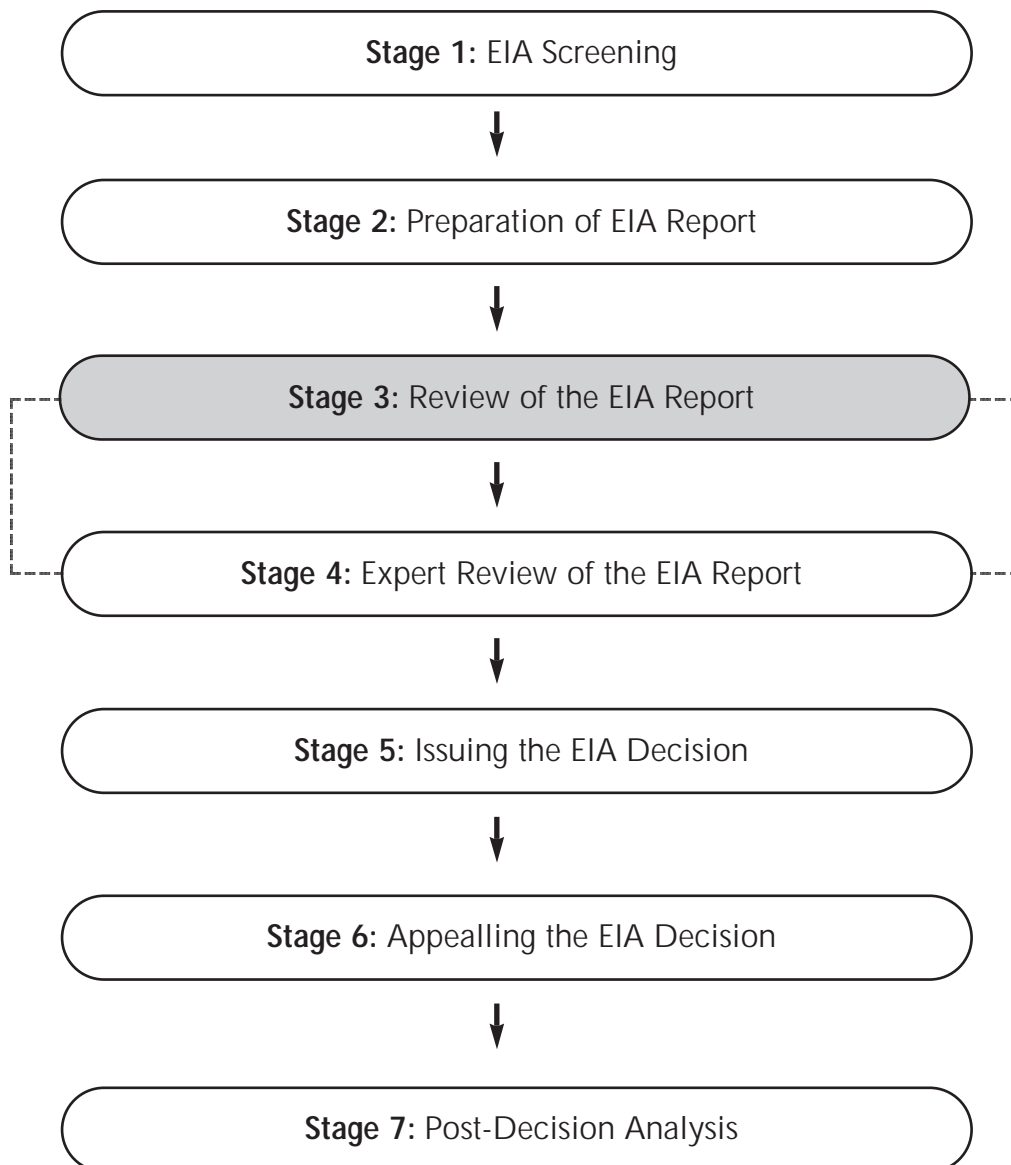
The purpose of Module 7 is to introduce participants to options and possibilities for public participation in the Environmental Impact Assessment (EIA) Process in Bulgaria. The module follows the order of the process by which the EIA procedure is conducted, identifying along the way opportunities and methods for the public to be involved.

### **OBJECTIVES**

At the end of this module training, participants should have an understanding of opportunities and methods of public participation in the following stages of the EIA process, and methods for applying these methods to their own particular public participation strategy:

- EIA screening stage;
- preparation of the EIA report;
- review of EIA report;
- expert review of the EIA report;
- issuing the EIA decision;
- appealing the EIA decision;
- post-decision analysis.

## Contents: Public Participation in the EIA Process



## **Introduction:** Public Participation in the EIA Process

Environmental Impact Assessment (EIA) dispositions first appeared in Bulgarian legislation in 1991 with the adoption of the EPL. Prior to that time, there had been no legal basis for the application of EIA rules, although MoE officials were given some instructions for requiring a report of the impact of certain projects on the environment. However, these instructions did not include any specific rules for public participation.

In 1991, when the EPL was adopted, Parliament instituted regulations requiring EIA studies and public participation in these processes, following the framework existing in European directives on EIA studies. Thus, in 1991, Bulgarian citizens received a very contemporary instrument for involving themselves in environmental decisionmaking processes in instances of industrial activity. In fact, an entire chapter of the EPL - Chapter 4 - addresses the basic regulations of EIA studies. The MoE subsequently adopted additional regulations on EIA studies in an attempt to make some of the texts of the EPL law more concrete. The text of these regulations is discussed later in the Module.

The “competent authority” (CA) referred to hereafter is that authority empowered to issue a decision following an EIA study.



## 7.2 EIA SCREENING STAGE

The EIA Act is a procedure for assessing industrial projects that may have an impact on the environment. When an EIA procedure is required, it is to be conducted by an independent party and applicants, or the subjects of the study, may not claim that the study is unnecessary on the grounds that all other permits are at their disposal.

The EIA procedure results in the issuance of the **EIA Act**. The EIA Act is an administrative act that must be granted before an applicant/developer can obtain a construction permit. The new EIA regulation does not explicitly state that a construction permit will automatically be granted after an EIA decision is obtained by an investor, but an investor cannot act without having all necessary documents and permits. This is why **interested parties may ask the RIE to stop the development or construction of a facility, which operates without any of the necessary permits.**

If an investor that has obtained a construction permit without having first received a favorable EIA decision, any NGO or citizen may request that the RIE or the Construction Control Inspectorate (CCI) stop the construction activities. Interested parties may **inquire whether all of the necessary and legal procedures were followed and the necessary documents approved by authorities** in order for a given investor/developer in order to obtain the construction permit. In order to investigate, interested parties will need to know:

- information where to find the construction permit;
- information about the necessary documents for obtaining the construction permit (this information is also useful for businesses);
- how to request information.

### 7.2.1 Who issues construction permits?

To find out if an investor has received a construction permit, interested parties can first ask the Building Department of their local municipality. Construction permits are issued by the main town architecture officer.

### 7.2.2 What information is required to obtain a construction permit?

Investors require a number of documents in order to acquire a construction permit from the local Construction Department, including documents concerning the prevention of environmental problems as well as public and occupational health problems. Box 7.1 indicates the documents required to obtain a construction permit.

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#### Case 7.1

*In a village near Sofia - Mircovo - the mayor issued a construction permit without having an EIA decision. Upon recognizing his error, the mayor rescinded the construction permit. The investor subsequently appealed the new decision for annulling the permit. The regional court in Sofia stated that the mayor's decision was correct, based on the argument that without the necessary EIA decision the permit could not be granted.*

*What examples do you know?*

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### Box 7.1

#### Documents Necessary to Obtain a Construction Permit

1. An official area plan of the place in question, stamped and signed by the following officials:
  - the Regional Hygienic Epidemiologic Inspectorate (RHEI): Such an authorization indicates that the industrial or commercial site is not in contradiction with Regulation No. 7 of the Ministry of Health and that this site would pose no public health risk.
  - the Regional Environmental Inspectorate (REI): The REI authorization indicates whether or not the site plan must be submitted to an EIA act study.
  - the permit is also signed by other authorities, including the Fire Protection Office, the energy company, etc.
2. Projects of the future industrial plant, containing all the necessary parts (architectural, technological, electrical, heating and ventilation, etc. and an EIA report) must be inspected and approved by:
  - the RHEI: The RHEI examines all parts of the project except the EIA report, and issues a document called a “sanitary expertise.” Interested persons can ask the RHEI directly if the document has been issued for a given plant.

#### 7.2.3 How do interested parties request information?

Boxes 7.2 and 7.3 illustrate samples of how an interested party might submit a written request to the RHEI and REI authorities requesting information about the permitting process of a given investor/developer.

#### 7.2.4 What Activities are Included in the EIA?

The list of activities that must be submitted to the EIA is prescribed in the EPL. As the EIA Act is issued either by the Minister of the Environment, or by the Director of the Regional Inspectorate of the Environment (RIE), there is a division of governmental jurisdiction over the EIA.

It is also important to know that an EIA also must be conducted for projects of general area plans of certain areas (zones). The EIA is required especially for industrial zones placed near residential areas or for zones with different kinds of activities planned to occur simultaneously, i.e. industrial plants, together with commercial sites and agricultural areas. With the further development of the process of land restitution and privatization in Bulgaria, the number of uses and applications of the EIA process should increase.

## Box 7.2

### Sample Request Letter for RHEI

**To:**

Director  
Hygiene Epidemiological Inspection  
Town of \_\_\_\_\_  
Address \_\_\_\_\_

Date: \_\_\_\_\_

**From:**

Your Name/Your Organization  
Your Address  
Your Telephone/Fax \_\_\_\_\_

Dear Sir/Madam,

In connection with the (name of project/case) I would like to receive information about the following issues and questions:

1. Has the RHEI approved an areas plan for the (case)?
2. Has the RHEI issued a sanitary expertise on the (case)?

If the RHEI has given its aproval, could you please then inform me of whether it has prescribed any requirements for the investor regarding necessary measures or improvements? What have been the results of this action to date? I appreciate your attention to these requests and look forward to your response.

With best regards,

Your Name

*Interested parties should include information about the case, including citations from the mass media, personal information or signs of public interest/protest in their letters to officials to motivate a response and to provide factual evidence of public interest.*

### Box 7.3

#### Sample Request Letter for RHEI

**To:**

Director

REI

Town of \_\_\_\_\_

Address

Date: \_\_\_\_\_

**From:**

Your Name/Your Organization

Your Address

Your Telephone/Fax

Dear Sir/Madam,

In connection with some brief announcements that occurred in the media recently about the future building of a waste storage depot for toxic and dangerous industrial wastes, we would like to receive information from you regarding the following:

1. Has the REI approved and signed an area plan for the investor?
2. Has the REI required an EIA Act on the area plan for the (site) for this industrial toxic waste storage?
3. Is there any EIA Act (either for the place or for the storage itself?) and has the REI issued any decision on it? If not, which authority has taken the decision and what is the outcome of this decision?
4. If there has been an EIA Report, in what way has it been announced for public discussions? Is the report currently available to the public?

With best regards,

Your Name

### 7.2.5 Who Has Authority to Make Decisions in the EIA Process?

**Article 13 of Regulation No. 1** of the EIA (**State Journal No. 73/1995**) defines which authority makes which decisions in the EIA process, and for which types of projects. There are relatively complicated criteria, and interested parties should consult the article closely before beginning an action to see whether the activity is listed. Interested parties should also be sure which authority has the power to issue the AA. In cases where authorities other than those authorized make decisions, then the EIA act can be cancelled.

In addition, an interested person can **propose that the competent authorities require an EIA study on an activity regardless of the nature of the project or the stage of its implementation** according to **Article 20/3** of the EPL. For activities already implemented, an EIA study can be conducted at the request of the competent authorities. Regulation No. 1 of the EIA processes (published in the State Newspaper of the Bulgarian Government (No. 73/1995), allows for the possibility to request that an EIA study be conducted on an already existing site. In addition, an EIA may also be requested by interested parties for investigation of the impact of a single element of an industrial site, for example an EIA on air pollution only. This is only the case for EIA acts of an industrial activity or site already in existence or already implemented. The EIA acts of future industrial plants, however, require investigation of the impacts of all the necessary elements.

Interested parties may **request the CA to conduct EIA studies** by referring either to the current conditions of an investor's activities, or to other data, indicating the activities' impact on the environment. Such data can be information from the mass media about the investor's illegal activities, or indications of the actual effects of the activity. Interested parties should direct such a request to the competent authority. There is no legal guarantee that this suggestion will be accepted, however.

This provision also enables interested parties to **request repetitions of EIA studies after an initial EIA permit** has been given. The repetition may be made every fifth year - and thus provides an excellent possibility for qualified "post-decision analysis/management" with a thorough public participation component. Interested parties should not miss out on any opportunity to use this important opportunity.

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### Case 7.2

*In Rousse, the mayor encouraged two of the largest industrial plants, a chemical and an electronics plant, to contract independent experts to conduct an EIA study on the impact of their activities on levels of air pollution. The mayor's actions were motivated by pressure from citizens concerned about the air quality in the community. The air had developed an unpleasant smell and was increasingly difficult to breathe. People began contacting various authorities to complain, including the municipal officers, the RHEI, the REI, and local newspapers and NGOs. One local NGO, Ecoglasnost, sent a letter of protest to the mayor. Local newspapers covered the story with front page columns. At the same time, the chemical plant (situated on the opposite side of the Danube in Romania) gave no response. The mayor of the Romanian town of Giurgevo was asked by the mayor of Rousse for an explanation. In reply, the mayor sent a letter indicating that the Giurgevo chemical plants had not been operating due to technical problems, and were therefore not at fault for the transboundary air pollution. The Environmental Division of Rousse organized an administrative meeting with the Chief Executive of the local services and two regional inspectorates. The results of the meeting indicated that the industrial plants were responsible for the pollutants. Public pressure caused the mayor to press the plants to conduct an EIA on air pollution impacts of their activities. The public was interested in information regarding air, ground water and drinking water contamination. Although the plants were state owned, and accountable only to the Minister of Industry, they agreed to an EIA on air quality.*

*What examples do you know?*

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### 7.3 PREPARATION OF THE EIA REPORT

The competent authority can decide what will be the scope for the EIA for a given site. The new EIA regulation, State Journal No. 73/95, is far more descriptive of the scope of the EIA report. In special annexes the scope of the different types of EIA reports is defined according to the objective of the report. The first annex discusses EIA reports regarding Land Use Plans; the second is focused on EIA reports about projects; and the third gives the content of the EIA report about already existing facilities.

The competent authority may decide to reduce the scope of an EIA report regarding existing facilities. The CA defines the scope and decides whether the report “shall cover all or only some of the components of the environment, touched by the existing facility.”

#### 7.3.1 Preliminary Versus Final EIA Reports

Article 6/3, Regulation No. 1 of the EIA provides that the investor must prepare a preliminary EIA report, which should be submitted to the competent authority. The regulation outlines the format of the preliminary and final EIA reports in **Article 6/2,4 of the Regulation No. 1**. The difference between a preliminary and final EIA is that the final report has a more detailed structure and a greater number of environmental issues which are included and discussed.

The distinction between the preliminary and the final EIA report was not provided by the EPL. The EPL defines only the term “EIA report.” The idea of “preliminary” and “final” EIA reports was created later in Regulation No. 1 of the EPL. The necessity for such a distinction is explained by the need to control greater numbers of projects in the initial stages of planning, and controlling the same projects again in the next, more detailed stage of planning when significant changes in the project are difficult to make. Now **Article 6/3** of the EIA regulation says that for some projects, the preliminary EIA report is obligatory. For interested parties, it is important to know that **the preliminary EIA report is obligatory always when the character of the agricultural land changes.**

The competent authorities oftentimes take advantage of this dual structure and make decisions on the basis only of the preliminary EIA report, without submitting the EIA report to a public discussion. In the new EIA regulation, this practice has been institutionalized and it is explicitly provided that the final decision can be taken on the basis of the preliminary EIA report. This is not provided by the law, however. In this sense, the regulations are illegal since a decision taken on the basis of a preliminary EIA report is issued without public discussion of the report.

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#### Case 7.3

*A waste storage for industrial toxic wastes was planned to be built in the eastern industrial zone of the town of Rousse. A big railway company was the investor. The location was pointed out by some community officers, but they prescribed a preliminary EIA report for the area. The investor hired a team of engineers to conduct the EIA study, and asked a hydrogeologist and a toxicologist to join the team. The results produced by the engineers did not contain anything which might be disturbing to the public, but the hydrogeologist and toxicologist pointed out that the zone was a wetlands, and that toxic contamination of the soil and the ground water would be certain. The source of drinking water for the city was next to the wetlands area proposed as the toxic waste disposal site. The toxicologist therefore concluded that the project was a high ecological risk and it was subsequently rejected. The head of the engineering team included their materials in the preliminary EIA report, but wrote a different conclusion, indicating that “there is a certain ecological risk, but there are technical methods of avoiding this...” It was not written down clearly that those technical methods were extremely expensive, perhaps multiplying the cost of the project by ten times. The investor asked the local REI to issue a final decision of the EIA on the basis of this preliminary report. The REI sent the report to the next higher authority, the Minister of the Environment, who approved the report and gave a final EIA decision. However, the storage facility has still not been built, and its fate remains uncertain.*

*What examples do you know?*

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### 7.3.2 Independent EIA Specialists

The EIA reports, both preliminary and final, must be prepared by an “independent specialist” who should not have personal or professional links of any sort with the investor. Interested parties may **question the competency or independence of the expert preparing an EIA report thorough a court appeal** of an EIA decision. Interested parties must consult Article 4 of the new EIA regulation and be sure that the specialist preparing the report is truly independent and that s/he responds to all the conditions of Article 4. If the specialist is well qualified, not independent, or does not have a license, the EIA decision can be appealed on that basis. Up to now there is no jurisprudence on this issue.

Interested parties should know who the final author of the EIA report is, to be certain that s/he is experienced -- both a competent and independent expert.

One possibility for interested parties to question the competency of the EIA expert is by focusing on **Article 21/1** of the EPL, which requires expert assessment also of the potential social impacts. Social impact analysis is not a task to be taken lightly by inexperienced experts.

If interested parties believe that an EIA expert is not competent or independent, they should find documents or witnesses to document their case. If there are only witnesses - prepare a written declaration, have the declaration authenticated by a notary, and consult a lawyer.

## 7.4 REVIEW OF EIA REPORT

The EIA regulation provides explicit procedures for public participation. The EIA report (preliminary as well as final) is submitted to the CA who is charged with arranging public discussion on it. There is relatively little practice in Bulgaria of public participation during the discussions, but those instances that did include such public involvement illustrate the positive effects it has during the discussions of the final EIA decision:

### 7.4.1 Announcement of Public Discussion

The announcement for public discussion must be made a least one month before the date of the discussion and must be made through the national and local mass media. One obstacle, however, is the cost of such public announcement, and one obstacle cited by competent authorities is that of the high costs necessary to adequately reach the broad public.

#### Box 7.4

*Although every EIA case is unique and may require particular expertise, interested parties should encourage EIA teams to be diverse and objective in opinion by assuring that all parties are independent of the investor in question, and that represent a variety of backgrounds and areas of expertise in environment, health and social fields. The following might be used as a guideline:*

- an engineer in electronics
- an engineer in ventilation systems or chemical engineering
- a forestry or biology specialist
- a toxicologies or health specialist
- a hydrogeologist
- others

*It may be in practice that in small communities in Bulgaria that do not have enough or certain experts available for preparing EIA studies, that some of the work may be conducted by members of the environmental councils of the REI. If the interested parties are suspicious of such an approach, they should stay very well informed of the REI's work and organize public hearings on the reports to assure all issues are examined objectively and thoroughly without bias.*

**Interested parties should be continually informed about what EIA public discussions are announced.** One of the potential options is to select an individual or an NGO to do the job of looking for such announcements and to inform potentially interested parties (NGOs, community leaders, Local Councillors in the affected municipalities, etc.) about the possibility to take part in the public discussions. Interested parties should **ensure that the announcement of public discussion is done thoroughly through public information campaigns on both local and national levels.**

During the period of one month prior to the public discussion, the investor must let the public see and consult the draft EIA report and background materials. The EIA decision can be cancelled on this procedural ground if the public has not been given proper access to the EIA documentation (the EIA report as well as background materials) although no jurisprudence exists on this matter in Bulgaria.

During this one month period before the public discussion, everyone interested can submit written opinions, remarks and objections. As outlined in EIA Regulation, Article 11, the investor collects all these submissions and includes them as part of the EIA report. If the public submissions are not included in the final report - this also may serve as a legal basis for cancelling the decision, although once again, there is no jurisprudence in this issue in Bulgaria. Regulation No. 1 of the EIA Act does not clearly describe the precise procedures of public announcements. An investor may, therefore, try to avoid a “real” public announcement (for example, by writing an order that a public announcement has been made and written opinions are expected in 30 days, and hanging this document in the office corridor).

#### *7.4.2 Organizing Public Discussions*

There are no specific rules or criteria for organizing public discussions. From the legal point of view this is not regulated, instead quality must be ensured by the interested parties.

The EIA decision can only be cancelled on procedural ground if:

- there was not public discussion;
- the public discussion was held less than one month from the announcement;
- the public discussion was not at all announced in the mass media.

There is, however, no jurisprudence on this issue in Bulgaria.



## Box 7.5

### Lessons from the Czech Republic: Organizing Independent Public Discussions on EIA Reports

The Czech EIA system does not provide adequate requirements for gathering citizens' comments after the EIA report is published. The EIA report is just made available for 30 days to citizens, who can read it, make copies, and provide written submissions. The information campaigns on the availability of the EIA report "for public review" are usually done in a very inadequate manner. In addition, the EIA reports are usually so complex that the task of reviewing them (usually in the office of the administration - because no one has money to make his/her own copy of it) is an extremely difficult one.

The combination of these issues has quite a detrimental effect on the quality of public participation in the EIA process. Interested citizens usually do not learn about their opportunities to inspect the EIA report, and even if they do manage to learn about it (usually through very informal channels), they are not able to provide qualified comments of the (usually very complex) EIA report. They thus miss a key opportunity for providing their comments in a timely and effective manner and - when they voice their comments later in the process - are accused of non-constructive behavior.

The Public Environmental Assessment Center (CR) therefore developed a system of "nonformal public reviews of EIA reports." The system is based on the presumption that NGOs can, if state agencies fail to do so, organize their own public discussions and can present these public submissions as a part of the official process.

**Important:** Your aim should be to gather citizens' comments and not trying to persuade them to identify with your arguments. These attempts may upset many people and create a feeling that you are just trying to manipulate public opinion. Therefore, consider carefully the results of exhibiting your own comments on the EIA report, and gathering signatures for petitions.

The above process has proven to have numerous benefits to NGO who organizes it. In particular the process:

1. Generates a lot of new data and expertise;
2. Identifies (both from the attendance at the hearing as well as from the comments that were voiced) general feelings of the community towards the proposal - and a basis for further steps on this knowledge;
3. Identifies key supporters and opponents of the NGO actions on the proposals;
4. Provides NGOs with substantive political power.

*The system is organized as follows:*

1. *Learn (either through formal or non-formal channels) about the accessibility of EIA reports;*
2. *Contact local activists and organize - in a locally known and accessible place (such as cinema, theatre, library) - an independent public hearing on the EIA report;*
3. *Undertake a thorough invitation campaign in order to get the message to all interested citizens - invite general public, but also media, Local Councillors, administrators, local scholars and external experts;*
4. *Invite proponents and experts who prepared the EIA report and ask them to present their findings to the public - if they do not accept the invitation, present the EIA report on your own;*
5. *Prepare posters summarizing key parts of the EIA report and exhibit them at the entrance to the place where the hearing is held - newcomers can thus quickly learn what the discussion is about, and posters also provide important background information during potential breaks of the public hearing;*
6. *Gather comments, organize them and submit them to the responsible authority as a part of the official submission process.*

If there are no adequate attempts to organize public discussion by the competent authority, **interested parties can organize their own public hearings on the preliminary EIA report and submit these results as a part of the official process.**

If there controversial issues arise in the initial EIA public hearings, the competent authority makes the decision whether there is a need for a second public discussion. Interested parties should consider whether there has been any substantial controversial issue identified during accessibility of the EIA report or during the public discussion. If so, the interested parties may **request the authorities to organize another public discussion** where these would be analyzed in appropriate depth.

The results from the public discussion should be included in the final EIA report, that is prepared afterwards. If the results of the public discussion are not included in the final report - this alone may also serve as a legal basis for cancelling the decision. There is also no jurisprudence on this issue in Bulgaria.

## 7.5 EXPERT REVIEW OF THE EIA REPORT

The review of the EIA report is done through a special Expert Council which gives it's opinion on the project. There is no provision for the obligatory representative of NGOs in the Expert Councils. There is often no provision of proper environmental health specialists either, and few Councils have a toxicologist at their disposal. The local administration must be represented in the Expert Council, that prepares the decisions of the RIE. Usually a specialist of the Ecological Department of the local community is present (or an ecological expert of the community in small communities that do not have such a department).

Expert Councils may also include experts who have not taken part in the same procedure up to this stage of the procedure. This is one basis on which interested parties can **request that authorities include their representatives in the Expert Councils**. On a nonformal basis interested parties can choose a representative for the Expert Council and may insist on allowing their representative to take part as a member of the Council, or at least to be present as a citizen at the session of the Expert Council. In this situation the authority will have to publicly choose - either to let the public know and decide, or to be less respected for the lack of democratic attitude. It would be good to create a practice of letting NGOs take part in the formation of the Expert Councils, although no jurisprudence exists in Bulgaria to guarantee this.

### Box 7.6

#### Suggestion

*The local RIE Council is gathered at least once a month ( or - in bigger cities - every week). The agenda of each Expert Council meeting is made several days (at least) prior to the meeting. The Council has a Secretary - a staffmember of the RIE. The interested parties could therefore also ask the Council Secretary what EIA projects are put on the agenda for the next meeting, or what were on the agenda of a previous meeting, or for some future period. The best way to request this information would be in written form, addressed to the Director of the local RIE, asking to have a copy of (or to be informed regularly about) the agenda(s) which are of interest.*

Interested parties can **try to obtain information about who is included in the Expert Council**. If they believe that any of the experts are not independent, they can ask the authority to exclude the person from the Council. Interested parties may find it useful to follow the work of EIA experts all over the country (or at least find out what previous cases they have been involved in, how independent they were perceived, etc.) and document this, since it may be necessary to possess materials proving the dependence of an expert. NGOs may also **submit counter expertise opinions on the subject to a Expert Council**.

## 7.6 ISSUING THE EIA DECISION

Once the Expert Council had given it's opinion on the subject of an EIA study, the authority issues a decision. The EIA regulation provides that the CA can issue the following types of decisions for an EIA study:

- a *positive EIA decision* if the environmental legislation is respected;
- an *order for the completion of the EIA report* if the data are not sufficient enough for the CA to make a decision;
- a *negative decision* that means either the temporary or the final closure of the existing facility or the prevention of the investor to develop an activity or to begin the construction.

Interested parties should **closely follow whether the EIA decision is motivated according to the directives and texts of Article 14** of the EIA regulation.

Sometimes a decision may not treat all obligatory issues. In this case, the decision can be cancelled on this ground, although there is no jurisprudence on this issue in Bulgaria. This is especially the case for EIA acts of future sites for industrial plants or others. If the EIA study has been conducted at an existing plant, then it is possible that the EIA may have been conducted on a single issue only -- as in the case of air pollution presented earlier. But it is important to keep in mind that such a "single-issue" EIA study may be conducted only in instances when it has been approved by the CA (in the case example above, the local community mayor). An expert (or a team of EIA experts) is not authorized to make such a decision. Under such circumstances, the EIA act would be illegal.

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### Case 7.4

*Sometimes, conditions of the final EIA decision can be suggested during the public discussion by the public itself. Such an example is the case about the factory for the treatment of radioactive waste (FTRW) near Kozloduy. The project was submitted to public discussion and during the discussion the public objected that in the factory there should not be treated "fresh" liquid waste. The final EIA decision was positive, but as condition it was stated that the factory should not treat "fresh" liquid radioactive waste. Thus the scope of activity of the factory was corrected in the conditions of the EIA decision.*

*What examples do you know?*

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In case of a positive EIA decision there may be certain conditions, which if violated would violate the EIA permit and face all possible consequent actions. The regulation does not give explanation of the kind of conditions which can be included as part of the decision - their specification depends primarily on the activities of interest parties. Interested parties may **ask the authority to issue the decision under some special conditions**, for example:

- *Mitigation and compensation measures* - executing some activities that are favorable for the environment or an affected community (see EIA table no. 3);
- *Post-decision monitoring* - organizing a self-monitoring system with obligatory submissions of results to the public.

The EIA decision must be announced through the mass media. The competent authority also must give copies of the decision to all interested physical or legal persons and must assure the free access of the general public to the decision. **Decisions may be appealed in court in the 14-day period from that of its publication** (for decisions of RIE) or in 30 days from the time of the Minister's decisions.

The definition in the EPL of what an “interested party” can be is a very broad one. In **Article 11/2** of the Regulation No. 1, it is said that “the state authorities, the local administrative authorities, the organizations of the public (NGOs), the public” take part in the discussion of the EIA project. These same persons, to whom it is given the right to take part in the public discussion, may also have access to the EIA decision, and the same persons can appeal the EIA decision.

## 7.7 Appealing the EIA Decision

The notion of an “interested party” in the EIA procedure is very broad, including all those who are affected by the project. Therefore, even those affected by the project in an indirect way may appeal an EIA decision. The **appeals can be based on violations of the EPL and Regulation No. 1**, already mentioned in the previous chapters and paragraphs. Interested parties should also be aware of what is said about the conditions under which the decision is issued in “Post Decision Analysis” below.

Appeals are brought into court through the competent authority that has issued the decision. The appeal must be filed in the register of the CA. In instances where the appealing party does not have the possibility to visit the CA’s office, or when the CA’s office is already closed, the appeal can be filed by registered mail or in the regular post. In the

latter case there would not be proof of having sent the letter. When an appeal is filed by letter, the date on the envelope is considered to be the date of the appeal's submittal.

Interested parties should also refer to **Module 9: Challenging the Decisions of Public and Private Institutions** regarding methods for challenging the actions of the government, municipalities and other public and private institutions.

## 7.8 POST-DECISION ANALYSIS

There are neither explicit directives regarding what should be the post-decision analysis process nor what should be the tools and deadlines for such a process. Interested parties may, however use the following legal **tools for initiating public participation in the post-decision analysis**:

### 7.8.1 Article 14/4 of Regulation No. 1

A provision in **Article 14/4** of Regulation No. 1 states that: "The final EIA decision describes the conditions of a positive decision, and regarding fulfillment of these conditions, the CA will exercise control."

The Regulation clearly stipulates that the CA can impose conditions on the investor. In most CA practice these conditions amount to nothing beyond recommendations for improvement of the EIA report. Interested parties may **directly challenge the decision in this case and make an appeal based on non-compliance with the law**.

When using **Article 14/4 of Regulation No. 1** for this purpose, interested parties may **suggest conditions at the preparation stage of the EIA decision** that may be used afterwards for exercising control over the investor's activity. (Such control is possible even if it is not explicitly provided in the EIA decision. The general powers of the RIE are to control the activity of persons, when this activity can potentially damage the environment.)

The EIA decision can, however, provide "special" conditions regarding the concrete activity, and measures for exercising post-decision control. These conditions can be linked with deadlines for specific parties of the project, within concrete stages of the project. Also, a condition for issuing the final decision can request the investor's obligation to provide:

- data regarding the *state of nature in the neighborhood* of the facility;



- data about the *levels of pollution in the working rooms* (the main polluting substances can be listed in a special list) - this condition can be asked jointly with the trade unions at the facility;
- data about the *way in which the investor is addressing some of the most dangerous products*, or waste, mentioned in a special list.

Conditions may also be put in the final EIA decision regarding obligations for the investor to allow representatives of the CA into the facility at any time for monitoring purposes. Interested parties may also **request that a CA representative may be accompanied by an NGO or other representative of the interested parties during these monitoring visits**. The control of the facility is, in general, a prerogative of the RIE, but such a clause would have great importance if included in the conditions for issuing a positive EIA decision. (The control of a facility is, in fact, a prerogative of the regional HEI, but control on the environmental impact of a facility is the prerogative of the REI).

#### 7.8.2. Article 20/3 and Article 20/4 of the EPL

Besides Annex No .1, according to **Article 20/3** of the EPL, an interested party may propose to competent authorities to conduct an EIA study on an activity without any limitation as to the character of the project or the stage of its implementation. For activities already implemented, an EIA study can be conducted upon request of competent authorities.

Interested parties may **request the CA to require, when issuing the actual permit, to repeat an EIA study**. **Article 20/4** of the EPL enables repetition of EIA study after the first EIA permit has been given. In order to make such a request, according to Article 20/4 of the EPO, it is enough that the facility is assessed as a “big polluting” facility. In such a case, the EIA process must be repeated every fifth year. This provides an excellent opportunity for qualified “post-decision analysis/management” with a thorough public participation component. Interested parties should not miss the opportunity to use this important method of involvement.

For other cases, however, there is no legal guarantee that the suggestion above will be accepted - but interested parties can **use this type of the post-decision analysis under the general provision for requesting the undertaking of new EIA** (see Article 20/3 of the EPL). Further information on this is described above in the “Screening Stage” of EIA.

# **Module 8:**

## **Public Participation in the Decisionmaking of International Financing Institutions**



## **Module 8:** Public Participation in Decisionmaking of International Financing Institutions

### **Purpose**

The purpose of Module 8 is to introduce participants to options and possibilities for public participation in the decisionmaking processes of international financing institutions operating in Bulgaria. This module is currently being developed, and will include information about options and possibilities for public involvement in the work of the World Bank and European Bank for Reconstruction and Development (EBRD).



# **Module 9:**

## Challenging the Decisions of Public and Private Institutions



## **Module 9:** Challenging the Decisions of Public and Private Institutions

### **PURPOSE**

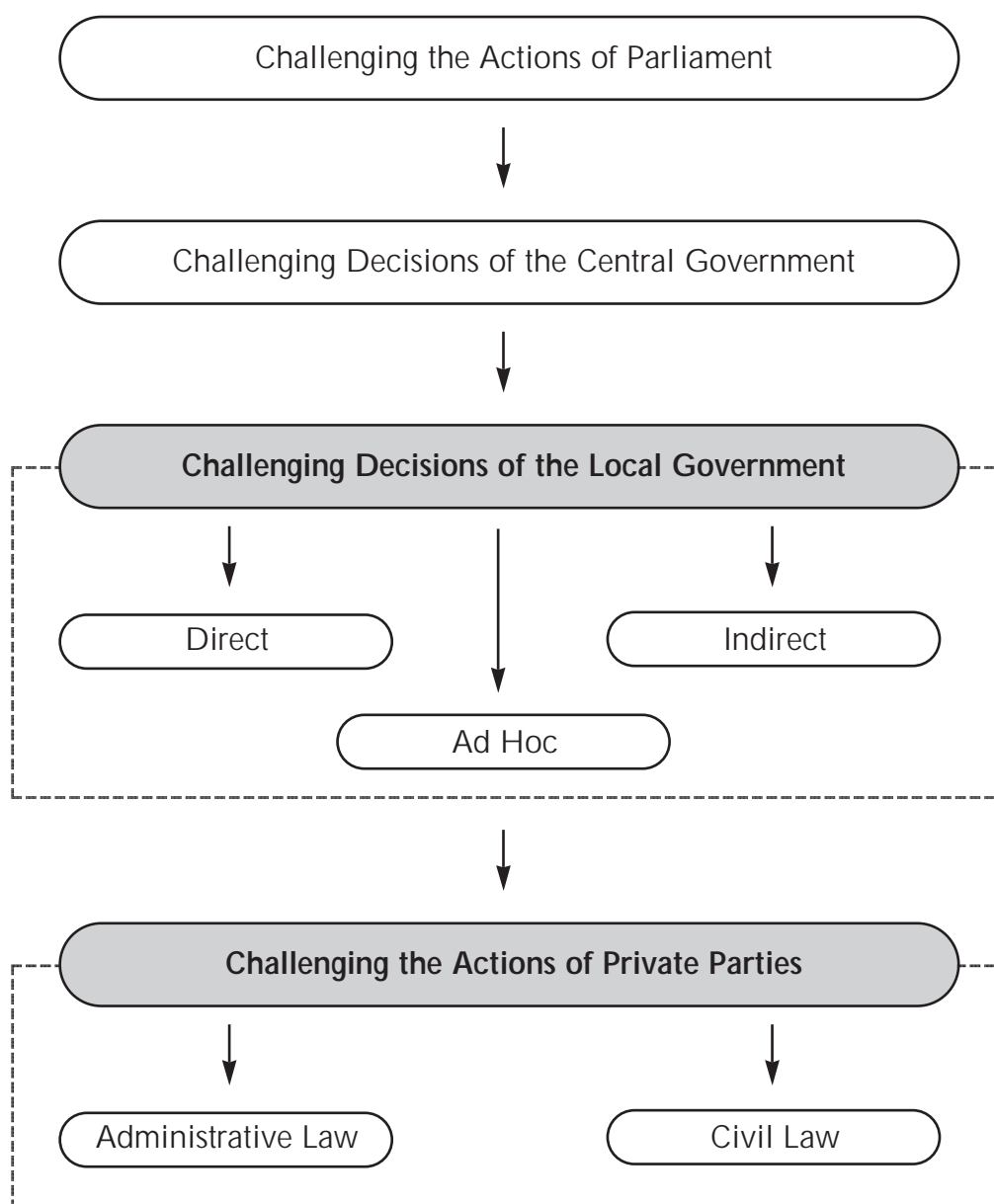
The purpose of Module 9 is to introduce participants to a variety of legal and nonformal options and possibilities for challenging the decisions of public and private institutions in Bulgaria.

### **OBJECTIVES**

At the end of this module training, participants should have an understanding of the following methods and how to apply them to their own public participation strategy:

- challenging the actions of Parliament;
- challenging the decisions of the central government;
- challenging the decisions of the local government;
- challenging the actions of private parties.

## Contents: Challenging the Decisions of Public and Private Institutions



## Introduction

Previous modules have focused on identifying a variety of opportunities for public participation in the decisionmaking processes of various public and private institutions. This module builds upon these options and identifies specific legal the opportunities for the public in Bulgaria to influence decisions and actions by public and private parties that are illegal or that it considers unfavorable toward the environment. In instances where no legal options exist, nonformal methods are recommended.

### 9.1 CHALLENGING THE ACTIONS OF PARLIAMENT

The decisions of Parliament may not be directly appealed by citizens or citizens groups. The only possibility that exists for the public to challenge the laws adopted by the Parliament is to lobby the MPs to challenge the law in the Constitutional Court. In Bulgaria, there are no officially recognized or enacted rules for “lobbying.” The political tradition in Bulgaria has established a far more calculated system of personal links between the political class, which is in course of forming now, and individuals, who have only begun to organize into groups since 1989. Therefore, “lobbying” as it is defined in the American system, is far less developed, as are the rules governing or regulating such activity in Bulgaria. Despite these historical and contemporary circumstances, however, interested parties must try all possible means to reach their MPs or the staff of their MPs and to “lobby” to further their ideas and convictions.

According to **Article 150** of the Constitution, only those persons or bodies identified in Box 9.1 can bring an appeal to the Constitutional Court against an already enacted law.

Interested parties can lobby one or several of these institutions to demand that they ask the Constitutional Court to declare a given law unconstitutional. Case 9.1 provides an example of such a case in Bulgaria.

Perhaps the most important approach for interested parties to influence the appealing process is to **organize using nonformal methods and actions** to support the actions of those persons and bodies

*“... interested parties must try all possible means to reach their MPs or the staff of their MPs and to ‘lobby’ to further their ideas and convictions.”*

#### Box 9.1

##### **Parties Allowed to Bring Appeals to the Constitutional Court (per Article 150)**

- one fifth of all MPs, or a minimum of 48 MPs;
- the President of the Republic;
- the Council of Ministers;
- the Supreme Court;
- the Prosecutor of the Republic.

that can appeal enacted laws in the Constitutional Court. As in the case of lobbying, there is no strict rule or prescribed method for this.

There are a number of possibilities, however. Interested parties can:

- ask for *meetings* with the responsible people;
- publish *articles* in defense of their position;
- offer to make *interviews* with the press;
- try to influence the responsible persons through *international organizations and campaigns* abroad.

### 9.1.1 Appealing a Lack of Activity in Enactment of Laws

The public does not have direct involvement in the process of enacting laws. According to **Article 87, Line 1** of the Constitution, this legal initiative belongs to any MP or to the Council of Ministers. Instead, the public has at its disposal the means to lobby any MP or the Council of Ministers for proposing a law to the Parliament.

MPs can be reached through the variety of methods, as described in **Module 4: Public Participation in National Governmental Decisionmaking**.

## 9.2 CHALLENGING THE DECISIONS OF THE CENTRAL GOVERNMENT

According to **Article 125, Line 2** of the Constitution, the Supreme Administrative Court can issue statements on the acts of the Council of Ministers (CM) and can decide whether or not these acts are legal. The Supreme Administrative Court has not yet been created, but the Supreme Court has decided that it will act in this role until the Supreme Administrative Court is functioning.

All interested parties, whether NGOs or businesses, may **appeal the act of the Council of Ministers**. Regardless of whether the interested party is a physical person, an NGO or a business, the interest of appealing is the same. In all cases, however, the appeal must be prepared by a lawyer.

Interested parties should **appeal to the Supreme Court** those acts of the CM that are considered illegal. The public can also react against specific activities of the Central Government, or the lack of activities, in cases where the government does not properly exercise its duties. The appropriate public response to inappropriate governmental activity should be chosen on a case-by-case basis. Here we speak primarily about the legal opportunities to respond, but there are many cases when there are no possibilities for a legal response by the public. In

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### Case 9.1

*An example of one approach in Bulgaria would be the demand signed by 51 MPs from the uDF against the amendment of the EPL (amendment adopted in the State Journal No 31/95) which states that the EIA process is non obligatory for some projects. The demand, signed by these 51 MPs, was accompanied by a vast campaign against the amendment. This campaign was organized and sustained by several NGOs. The presence in the Parliament of a group of MPs from Ecoglasnost made the action more easy. Some "rivalry" began over the question of which organization began the campaign, and which organization played the most important role. In fact, all NGOs - both these that are close to the governing party and those which are close to the opposition, protested as a part of the campaign. This is not typical political behavior for Bulgaria -- in fact, during this campaign different organizations of the ecological movement worked together for the first time in order to abolish this amendment.*

*What examples do you know?*

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these situations, the public -- both business and the NGO sector -- will have to **inform public opinion** about the illegal acts of the government. There are a number of possible ways of doing this, and interested parties can use a variety of nonformal tools, including:

- an information campaign about the facts;
- a protest campaign: protest demonstrations, protest letters, protest camps, etc.

The use of pressure requires a very **good knowledge about the acts that regulate a given issue**. For example, if interested parties are interested in water protection, they would need to consult the following documents:

- the water use permits issued by the competent authority (see Articles 8 - 10 of the Water Use Law). In cases where the water is taken from the water supply net, the permit is given by the Water and Canalization Firm on the territory of the Municipality.
- the water discharge permits;
- the plan for the sanitary zone around the water sources and the conditions for the economic activity in this zone;
- the local Regulation for the protection of the environment.

## 9.3 CHALLENGING THE DECISIONS OF THE LOCAL GOVERNMENT

### 9.3.1 Direct Challenging

The local government issues many individual administrative acts that concern the public, including:

- the construction permit;
- the act with which the amendment to the Local Land Use Plan is approved;
- the act with which the sanitary zone around a water source is created and with which certain conditions for the economic activity is created.

These administrative acts are appealable according to the Constitution and the Law on the Administrative Procedure. There has been practice to appeal the construction permits and the amendment of the Local Land Use Plans in Bulgaria, but there has been little to no practice regarding the other possibilities to appeal.

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#### Case 9.2

*There is a precedent in Bulgaria of a physical person appealing to the Supreme Court regarding a Regulation of the Ministerial Council. The case regarded an appeal regarding local taxes which contradicted the Local Tax Law. The Supreme Court ruled in favor of the right to appeal, and issued a decision on the case. The Regulation in question included an interest of commercial firms to abolish the act of the Council of Ministers concerning a restriction to pay sums larger than 20,000 levas in cash.*

*What examples do you know?*

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#### Case 9.3

*A good example of a nonformal public response is the case of the Green Patrols' reaction against the illegal logging in the Rhodopes mountain, described earlier and the case of the closing the illegal waste disposal in Etropole.*

*What examples do you know?*

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## Box 9.2

### Guidelines for Direct Challenging

A suggested set of guidelines for all interested parties, including individual citizens, NGOs and businesses, for directly challenging:

#### 1. Request Information

The interested parties must know that some acts are in the course of preparation. The public can ask for information through existing legal mechanisms: the right of information, provided in Articles 8-14 of the EPL. The necessary information can be provided also through nonformal mechanisms.

#### 2. Establish the Objective

The interested parties should know and formulate the objective - whether it is a reduction of pollution, or the provision of an installation with some additional guarantees for safety production, or the imposition of some restrictions on the economic activity.

#### 3. Submit Demand

The interested parties should submit a demand to the local administration with information about the act, regardless of whether it is an amendment to the Local Land Use Plan or for a water discharge permit.

#### 4. Consult a Lawyer

With the help of a lawyer, the interested parties should consult the law and see whether the administrative act is appealable according to the Law on the Administrative Procedure, or whether another way to appeal the act exists, or whether the act is not appealable at all. Usually, if there is not a special norm, the act is appealable according to the Law on the Administrative Procedure. This means that the interested party should be informed about the act, when this act is issued, etc.(this is why filing the demand with the Local Administration is an important step).

#### 5. File an Appeal

If there are no special rules for the procedure, there is a seven day period, from the day the interested part is informed, in which to appeal the act. The appeal is filed in the Local Administration, but is addressed to the court.

#### 6. Prepare Documentation and Proof

During the proceeding in the court, the question of whether there is a legal interest in favor of the interested party can be discussed. Normally, the court should have proof that the interested party is an interested party in terms of the law on the Administrative Procedure. This is why it is good to have the act of it's registration in the court. It is also good to have documented some of the activities of the interested party (for example, articles in local newspapers). In court, the question of whether the interested party has legal interest to appeal the administrative act is the first question that will be discussed. All other efforts can be in vain if the interested party is not admitted in the procedure.



### 9.3.2 Indirect Challenging

There are some cases where the public is not given the right to directly challenge the decisions of the local authorities, but where the public can **exercise public pressure on the authorities given the right to appeal** the decision or to issue other acts. Such cases are:

1. The prerogative of the regional governor to bring to the Regional Court the decisions of the Local Council - **Article 72** of LGLAL. Here the Regional Court will decide whether the act of the Local Council is contrary to any law or not.
2. The right of the mayor to object to the decision of the Local Council - **Article 45, Line 2** of LGLAL.
3. The right of the Local Council to abolish the act of the mayor if these acts are contrary to the Local Council's decisions - **Article 45, Line 1** of LGLAL.

The possibilities are numerous - for example, the mayor may issue acts that are more favorable to the protection of the environment. If these acts are abolished by the Local Council, the position of the public can be in support of the regional governor, which can object to the acts of the Local Council. The opposite situation is also possible: the mayor may issue an acts that does not take in account the dispositions of the local regulations for the protection of the environment. In this situation, the public's interest will be in support of the Local Council's efforts to abolish the mayor's decisions.

There are no cases in Bulgaria of using any of these specific mechanisms provided in LGLAL in connection with environmental issues. However, the cases presented (Case 9.4) provide examples of how these mechanisms have been utilized in connection with other issues.

### 9.3.3 Ad Hoc Challenging

There may be instances when the Local Regulations are less favorable for the environment than the law. In such instances, if the local regulation is not abolished by any of the mechanisms described above in 9.3.2, the interested party can ask the court to apply the law and not the local regulation. During the procedure, the court will have to decide whether the local regulation and the law have the same matter of regulation, and which act – the law or the local regulation – must be applied. If, for example, a central regulation provides that the noise level at five meters distance from a restaurant should be no higher than five decibel, and if in a given section of the city the local regulation adopts, “for environmental reasons,” stricter conditions for restaurants (perhaps a maximum of four decibel),

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#### Case 9.4

*Sofia's mayor objects to the decision of the LC of Sofia to order the mayor to return a sum of 126 000 leva spent for advertisements to the Municipality. In the future, the LC should vote the same decision again with the majority of more than the half of all Councillors. If so, the mayor can object to the decision in court, but only on a legal basis.*

*Also, Sofia's Regional Governor stopped the decision of Sofia's LC to transform the municipality firms "Health" and "Liulin" to firms with limited responsibility. The Regional Governor's motives were linked to the lack of guarantees for workers in the firms. The labor legislation provides some guarantees for the share of workers or for the working conditions in cases of the transformation of one commercial form into another. The example does not concern the environmental field, it is a pure example from commercial law and from labor legislation. However, the case illustrates that the Regional Governor stopped the decision exactly on these motives.*

*What examples do you know?*

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interested parties can argue ad hoc whether the local or the central regulation should be applied.

At the center of this issue is the very interesting and important matter about the relations between the local and the central “legislation” in Bulgaria. There is currently not a very distinctive delimitation between the prerogatives of the central government and those of the local government. It is not clear, for example, what “environmental issues of local importance” means specifically. As illustrated in Case 9.5, this

### **Case 9.5**

#### **Conflict Between Local and National Regulations**

A hypothetical case example of the potential conflict between local and national regulations would be that of when a local regulation adopts noise level standards in a community of a different standard (either higher or lower) than those provided in national legislation. In such an instance, the argument of the Local Council can be, for example, that peace and quiet is necessary for the health of the community, or that such noise has a direct impact on the tourist business of the community. Such reasons can be the motive for the adoption of stronger local regulations for the protection of the environment.

However, an opposite situation is also possible: the Local Council adopts local regulations that are of a lower standard than the central rules. The motives may again be linked with the tourist business, arguing that the community should not chase away tourists with stronger rules than those already mandated. It is obvious that in the two possible situations the position of the interested party will be different.

In the first situation, when the local regulation has higher standards, the position of the interested party will be in favor of the local regulation. In this case, the defense will be oriented to the “local importance” of the issue. The interested party will have to prove that the issue is of “local importance” so that the court can admit that the local regulation will be the act to be applied.

In the second situation, the interested party will be in favor of having the central rule applied instead of the rules of the local regulation. In this situation, the interested party would need to find the proof that the issue regulated in the local regulation is not of “local importance,” that it has nothing to do with the environment or that the issue regulated in the local regulation is only one side of a larger issue linked with the environment. If we accept that the milder standards of noise level are adopted by the local regulation, then the interested parties will have to prove that the higher level of noise permitted in the city is not good for the health of the population living in the neighbourhood of restaurants and places where the public gathers.

In conclusion, the question of what is of “local importance” can be treated “ad hoc” in any case in the court.

lack of clarity can produce the potential of conflict between the local and the central rules if, for example, a local regulation for the protection of the environment adopts stronger standards than those provided in national legislation.

There are not public known cases where the local regulation was objected on the basis of contradiction to the law. As the Local Government and the Local Administration Law (LGLAL) is a relatively recent one, instituted in 1991, there are not many examples for comparing the local and the central legislation.

Regarding “laws,” it is important to mention that after the adoption of the new Constitution in 1991, a new rule was introduced in the Bulgarian legal system. International treaties, ratified by Bulgaria, and published in the Official Journal, are stronger than internal Bulgarian laws (**Article 5, Line 4** of the Constitution). This provides an important opportunity for interested parties to influence domestic activities utilizing the tools provided in international treaties and conventions.

#### **9.4 CHALLENGING THE ACTIONS OF PRIVATE PARTIES**

The term “private parties” here refers to physical and legal individuals belonging to the private sector (i.e. firms, societies, cooperatives, etc.)

##### *9.4.1 Administrative Law*

In administrative theory, the authorities are empowered to do things beyond the disposal of every citizen. For example, the Minister of the Environment can stop or close facilities, that do not respond to the required standards of activity, but this is at everyone’s disposal. In some cases, the developed countries allow citizens to start some administrative procedures themselves. Thus the administrative authority is again empowered to act (the citizens do not have this right), but the administrative authority cannot stop the process without the consent of the citizens. This form of “direct” acting by citizens does not exist in Bulgaria. Interested parties can only inform the administrative authority about violations of the environmental legislation, but cannot act instead of the administrative authority.

Therefore, in Bulgaria there is not a possibility for direct enforcement of the law by private persons or NGOs. Interested parties can only use tools to inform the authorities that have the prerogative to act against a violation of the law or an individual permit and to request them to utilize their prerogatives to stop the violation or to impose sanctions on the violator. In order to do this, the interested parties must know which administration is responsible for the issue in question.

The general administrative power in environmental issues is the MoE and its local agencies - the Regional Inspectorates for Environment (RIE). When the issue concerns the territory of only one municipality, then the administrative power can also be the Local Administration (**Article 27** of the EPL). The prerogatives of the MoE and of RIE are great. **Article 28(1)** of the EPL states that:

“(1) In case when there is damage to the environment - caused or supposed - and when this is realized through an EIA procedure - the competent authority can:

1. stop the activity until the violation stops;
2. stop indefinitely the activities that can cause irreparable damages to the environment or to the human health;
3. give prescriptions for removing the consequences of the violation.

(2) The Minister of the Environment can stop the execution of other Ministries' acts and acts of the Municipalities, when these acts contradict the dispositions of the EPL.”

The application of the text of **Article 28** of the EPL is of tremendous usefulness to interested parties. It is important to also have a profound and concrete **understanding of the rights and powers of the other Ministries**. There is not currently a comprehensive source of information regarding all related environmental laws and regulations. Very often the matter is so technical, that it concerns only a handful of specialists. Even in the MoE, specialists do not have copies of the acts of other Ministries. Because it is so difficult to obtain information, it is important for interested parties to **seek the assistance of a specialist** to obtain the necessary information about an activity and its consequences to the human health and to the environment in order to press for the application of Article 28(1) of the EPL.

From legal point of view, the prerogative of the Minister of the Environment is so great that the problem is a question of how to create the situation in which the MoE can use its powers without being hindered by other branches of executive power. This issue is often-times very closely linked with the influence of industrial lobbies as illustrated in Case 9.6.

This is a clear opportunity for cooperation between NGOs/communities and the MoE, since the public and its representatives will have a vested interest in creating a climate for the proper application of the

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#### **Case 9.6**

*The dispute between the MoE and the Forest Committee over the creation of a National Service for Biodiversity by the MoE, that would look after the protection of the biodiversity, is one example of the “rivalry” between the powers of different branches of executive power. The creation of such a service was a threat for interference in the activity of the Forest Committee which is at the same time the agency responsible for controlling and exploiting the forests. The woodcutting and woodtrading lobby was against the initiative, and even if the service was legally created, it does not function.*

*The attempts of the Ministry of Construction to exempt the Land Use Plans from EIA study is another example. The interests at stake are the interests of the powerful construction and entrepreneur lobby which would like to have a less complicated procedure. The officials of the Ministry of Construction would like to have all the power to decide all questions over the Land Use Plans, since more power means more money.*

*What examples do you know?*

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law and in which the Minister of the Environment will feel the public support to act according to the law. In this case **nonformal methods of protest** against the polluting activity, against the Minister's inaction, or in support of the Minister actions to stop or sanction the polluter would be most effective.

**Article 23 B** of the EPL also illustrates the great potential of the powers of the MoE:

“The competent authority interdicts or stops the activities or the realization of projects for which the EIA decision is negative; or for which the obligatory EIA procedure has not been held; or which are not equipped with the necessary facilities for prevention of the environmental pollution and for purifying the emissions in the environment.”

Again, there is great potential for **cooperation between interested parties and the MoE** to support the actions of the Minister of the Environment in favor of the protection of the environment. Of course if the Minister of the Environment has public support, s/he would act more boldly and would have more courage to enter into conflict with the other more powerful ministers of the “industrial ministries.” If the Minister of the Environment lacks public support, s/he would be less courageous and less motivated to act in favor of the environment. Increased public support also assures public awareness about environmental problems – another motivation for “acting according the law.”

#### *9.4.2 Civil Law*

If in the administrative field, there is no possibility for direct enforcement of the environmental law. The EPL gives an excellent tool for enforcement of the environmental law through civil action directly in court (according to the civil procedure). **Article 29 and 30** of the EPL provide the basis for such action:

**Article 29:** “Persons who are found to have, by intent or neglect, caused harm to others by pollution or damage to the environment shall be bound to remedy the damage. The compensation may not be less than the sum required to repair the damages caused.

**Article 30(1):** “The injured party under Article 29 can request the court to order the dangerous activity to cease and to remove the consequences of the pollution.

**(2)** The actions under Line 1 of Article 30 can be brought in court also by the municipal authorities, by citizen's associations and by any citizen.”

It is obvious that here the law gives great prerogatives to the court to stop polluting activity. The law also provides the right to any citizen or to any citizen's association to bring the action to court. The problems are again in the nonformal aspect, however. The first problem is how to know when there is damage to the environment caused by "intent or neglect." Here interested parties can use the procedures for obtaining information from the authorities. Box 9.3 illustrates a proposed method for proceeding.

#### Box 9.3

##### **Suggested Method for Using Articles 29 and 30 of the EPL**

1. Ask for information about the existence of permits and about the conditions for the activity, described in the permit.
2. Collect information through formal and nonformal tools about the result of the polluting activity.
3. Try to document the obtained data.
4. See whether there is discordance between the polluting activity and the standards, described in the permit. What is done in violation of the permit will already be illegal.
5. The question about the intent or the neglect action must be discussed with a lawyer, but if the data collected during the first four steps shows violation of the law, then the prospects for success of the Article 29 and 30 action is good.

In addition, another possible step for the interested party would be to **inform the Local Administration of the violation** and to request a civil procedure in court.

In situations when the Minister of the Environment has the power to sanctions on the polluter, but there is significant pressure from other agencies, the interested party must **organize public support** of the action so that the defense is in the difficult position to influence the court decision against whomever brings the action under **Articles 29 and 30** to court. The cause of environmental protection must be backed by the public with the organization of nonformal activities.

#### **Case 9.7**

*Even without using the tool of Articles 29 and 30 of the EPL, the steps described in Box 9.3 were used by the Green Patrols in two of their successful actions in Etropole and in the Rhodopes Mountains.*

*What examples do you know?*

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